HOUSE OF COMMONS

Second Session—Twenty-second Parliament

1955

STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCULLOCH, ESQ.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 11

BILL No. 449

An Act to amend the Transport Act

WEDNESDAY, JUNE 29, 1955

WITNESSES:

Mr. H. E. B. Coyne, Q.C., and Mr. Jean Brisset, Q.C., both representing Irish Shipping Limited and Saguenay Terminals Limited; Mr. D. K. MacTavish, Q.C., Counsel, Canada Steamship Lines; Mr. C. D. Shepard, Q.C., Counsel, Province of Manitoba.

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STANDING COMMITTEE

ON

RAILWAYS, CANALS AND TELEGRAPH LINES

Chairman: H. B. McCulloch, Esq.

and Messrs.

Barnett
Batten
Bonnier
Boucher (*Chateauguay-Huntingdon-Laprairie*)
Buchanan
Byrne
Campbell
Carrick
Carter
Cauchon
Cavers
Clark
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Gauthier (*Lac St. Jean*)
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Green
Habel
Hahn
Hamilton
Hamilton (*Notre Dame de Grace*)
Hamilton (*York West*)
Hanna
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Holowach
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Howe (*Wellington-Huron*)
James
Johnston (*Bow River*)
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Lafontaine
Langlois (*Gaspe*)
Lavigne
McIvor
Meunier
Montgomery
Murphy (*Lambton West*)
Murphy (*Westmorland*)
Nesbitt
Nicholson
Nickle
Nixon
Nowlan
Purdy
Ross
Small
Stanton
Viau
Villeneuve
Vincent
Weselak

E. W. Innes,
Clerk of the Committee.

REPORT TO THE HOUSE

FRIDAY, JULY 1, 1955

The Standing Committee on Railways, Canals and Telegraph Lines begs leave to present the following as its

SEVENTEENTH REPORT

Your Committee has considered Bill No. 449, An Act to amend the Transport Act, and has agreed to report it with amendments, namely:

Clause 1

Page 1, immediately after the word "transport" in lines 8 and 9, insert the words "from one point in Canada to another point in Canada".

Page 1, line 14, immediately after the word "rail" insert the words "consent thereto in writing or".

Page 2, lines 6 to 15 inclusive, are deleted and the following substituted therefor:

> (5) Where an agreement for an agreed charge is made by a carrier by rail any carrier by water which has established through routes and interchange arrangements with a carrier by rail shall be entitled to become a party to an agreement for an agreed charge and to participate in such agreed charge on a basis of differentials to be agreed upon in respect of the transport from or to a competitive point or between competitive points served by the carrier by water of goods with regard to which the carrier by water is required by this Act to file tariffs of tolls.

Page 3, lines 21 to 49 inclusive, are deleted and the following substituted therefor:

> 33. (1) Where an agreed charge has been in effect for at least three months
>
> (*a*) any carrier, or association of carriers, by water or rail, or
>
> (*b*) any association or other body representative of the shippers of any locality
>
> may complain to the Minister that the agreed charge is unjustly discriminatory against a carrier or a shipper or places his business at an unfair disadvantage, and the Minister may, if he is satified that in the public interest the complaint should be investigated, refer the complaint to the Board for investigation.
>
> (2) The Governor in Council, if he has reason to believe that an agreed charge may be undesirable in the public interest, may refer the agreed charge to the Board for investigation.
>
> (3) In dealing with a reference under this section the Board shall have regard to all considerations that appear to it to be relevant, including the effect that the making of the agreed charges has had or is likely to have on the net revenue of the carriers who are parties to it, and in particular shall determine whether the agreed charge is undesirable in the public interest on the ground that it is unjustly discriminatory against any person complaining against it or places his business at an

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unfair disadvantage or on any other ground, and, if so directed by the Governor in Council in a reference under subsection (2), whether the agreed charge is undesirable in the public interest on the ground that it places any other form of transportation services at an unfair disadvantage.

(4) If the Board, after a hearing, finds that the agreed charge is undesirable in the public interest on the ground that it is unjustly discriminatory against any person complaining against it or places his business or any other form of transportation services at an unfair disadvantage or on any other ground, the Board may make an order varying or cancelling the agreed charge or such other order as in the circumstances it considers proper.

(5) When under this section the Board varies or cancels an agreed charge, any charge fixed under subsection (10) of section 32 in favour of a shipper complaining of that agreed charge ceases to operate or is subject to such corresponding modifications as the Board determines.

A copy of the evidence adduced in respect of Bill No. 449 is appended.

All of which is respectfully submitted.

H. B. McCULLOCH,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, JUNE 29, 1955

The Standing Committee on Railways, Canals and Telegraph Lines met at 11.30 o'clock a.m. The Chairman, Mr. H. B. McCulloch, presided.

Members present: Messrs. Barnett, Bonnier, Byrne, Cameron (*Nanaimo*), Carrick, Carter, Cavers, Follwell, Green, Habel, Hahn, Hamilton (*Notre-Dame-de-Grace*), Harrison, Hansell, Healy, Herridge, Hosking, Howe (*Wellington-Huron*), Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, McCulloch (*Pictou*), McIvor, Meunier, Montgomery, Murphy (*Lambton West*), Nicholson, Purdy, Small, Stanton, Villeneuve, and Weselak.

In attendance: For the Department of Transport: Honourable George C. Marler, Minister of Transport; Mr. G. A. Scott, Director of Economics; and Mr. F. T. Collins, Secretary and Comptroller.

For Irish Shipping Limited and Saguenay Terminals Limited: Mr. H. E. B. Coyne, Q.C., Counsel, and Mr. Jean Brisset, Q.C., Counsel; Mr. William Baatz, Treasurer, and Mr. W. D. Flavelle, Traffic Manager, both of Saguenay Terminals Limited.

For Canada Steamship Lines: Mr. D. K. MacTavish, Q.C., Counsel; and Mr. R. S. Paquin, Assistant Freight Traffic Manager.

For Province of Manitoba: Mr. C. D. Shepard, Q.C., Counsel, and with him Mr. V. M. Stechishin, Manager, Manitoba Transportation Commission.

The Committe resumed study of Bill No. 449, An Act to amend the Transport Act.

Mr. Coyne, on behalf of Irish Shipping Limited and Saguenay Terminals Limited, continued his submission respecting the bill under study; he was questioned, and allowed to stand aside.

Mr. Brisset was also called, supplemented the statement of Mr. Coyne and was questioned.

At 12.55 o'clock p.m., the Committee adjourned until 2.30 o'clock p.m. this day.

AFTERNOON SITTING

The Committee resumed at 2.30 o'clock p.m., the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Barnett, Batten, Bonnier, Byrne, Cameron (*Nanaimo*), Carrick, Carter, Cavers, Gauthier (*Lac-Saint-Jean*), Green, Habel, Hahn, Hamilton (*Notre-Dame-de-Grace*), Harrison, Hansell, Healy, Herridge, Hosking, Howe (*Wellington-Huron*), James, Kickham, Lafontaine, Langlois (*Gaspé*), Lavigne, McCulloch (*Pictou*), McIvor, Meunier, Montgomery, Murphy (*Lambton West*), Nicholson, Purdy, Stanton, and Villeneuve.

In attendance: Same as at morning sitting.

Mr. Coyne and Mr. Brisset, assisted by Mr. Baatz and Mr. Flavelle, answered questions and were retired.

Mr. MacTavish, on behalf of Canada Steamship Lines, spoke briefly suggesting certain changes in the wording of the bill under study; he was questioned thereon and retired.

Mr. Shepard, on behalf of the Province of Manitoba, outlined that Province's position with respect to Bill No. 449; he was questioned and retired.

Mr. Marler made a statement in reply to the various submissions presented to the Committee, and submitted a proposed amendment to the Bill.

The Committee proceeded to the detailed study of Bill No. 449.
On clause 1:

Mr. Green moved, seconded by Mr. Hahn,—

That on Page 1, line 8, there be inserted between the words "may make" the following "to meet competition".

The motion was resolved in the negative on the following division: Yeas: 7, Nays: 20

Mr. Hamilton (*Notre-Dame-de-Grace*) moved, seconded by Mr. Green,—

That on Page 1, line 9, there be inserted between the words "transport of" the words "within the continental limits of North America and Newfoundland".

The motion was resolved in the negative on the following division: Yeas: 7, Nays: 19.

At 6.00 o'clock p.m., the Committee adjourned until 8.00 o'clock p.m. this day.

EVENING SITTING

The Committee resumed at 8.00 o'clock p.m., the Chairman, Mr. H. B. McCulloch, presiding.

Members present: Messrs. Batten, Boucher (*Chateauguay-Huntingdon-Laprairie*), Cameron (*Nanaimo*), Carrick, Carter, Cavers, Follwell, Gourd (*Chapleau*), Green, Hahn, Hamilton (*Notre-Dame-de-Grace*), Harrison, Hansell, Healy, Herridge, Hosking, Howe (*Wellington-Huron*), James Johnston (*Bow River*), Kickham, Lafontaine, Langlois (*Gaspé*), Lavigne, McCulloch (*Pictou*), McIvor, Meunier, Montgomery, Murphy (*Lambton West*), Nicholson, Purdy, Stanton, Viau, and Villeneuve.

In attendance: Same as at morning sitting.

The Committee resumed the detailed consideration of Bill No. 449, An Act to amend the Transport Act.

On clause 1:

On motion of Mr. Langlois (*Gaspé*), seconded by Mr. Cavers,

Resolved,—That on Page 1, line 14, immediately after the word "rail" there be inserted the following "consent thereto in writing or".

On motion of Mr. Langlois, (*Gaspé*), seconded by Mr. Lafontaine,

Resolved,—That on Page 2, lines 6 to 15 inclusive, be deleted and the following substituted therefor:

(5) Where an agreement for an agreed charge is made by a carrier by rail any carrier by water which has established through routes and interchange arrangements with a carrier by rail shall be entitled to become a party to an agreement for an agreed charge and to participate in such agreed charge on a basis of differentials to be agreed upon in respect of the transport from or to a competitive point or between competitive points served by the carrier by water of goods with regard to which the carrier by water is required by this Act to file tariffs of tolls.

Mr. Green moved, seconded by Mr. Montgomery,

That on Page 2, there be inserted immediately after line 20 the following:

6(a) Every agreed charge shall be compensatory that is to say shall be such as will improve the net revenue position of the carrier.

The motion was resolved in the negative on the following division: Yeas: 8, Nays: 19.

By leave the Committee reverted to lines 8 and 9 of Page 1.

On motion of Mr. Cavers, seconded by Mr. Langlois (*Gaspé*),

Resolved,—That on Page 1, immediately after the word "transport" in lines 8 and 9 there be inserted the words "from one point in Canada to another point in Canada".

Mr. Langlois (*Gaspe*) moved, seconded by Mr. Cavers,

That on Page 3, lines 21 to 49 inclusive, be deleted and the following substituted therefor:

33. (1) Where an agreed charge has been in effect for at least three months

(*a*) any carrier, or association of carriers, by water or rail, or

(*b*) any association or other body representative of the shippers of any locality

may complain to the Minister that the agreed charge is unjustly discriminatory against a carrier or a shipper or places his business at an unfair disadvantage, and the Minister may, if he is satisfied that in the public interest the complaint should be investigated, refer the complaint to the Board for investigation.

(2) The Governor in Council, if he has reason to believe that an agreed charge may be undesirable in the public interest, may refer the agreed charge to the Board for investigation.

(3) In dealing with a reference under this section the Board shall have regard to all considerations that appear to it to be relevant, including the effect that the making of the agreed charges has had or is likely to have on the net revenue of the carriers who are parties to it, and in particular shall determine whether the agreed charge is undesirable in the public interest on the ground that it is unjustly discriminatory against any person complaining against it or places his business at an unfair disadvantage or on any other ground, and, if so directed by the Governor in Council in a reference under subsection (2), whether the agreed charge is undesirable in the public interest on the ground that it places any other form of transportation services at an unfair disadvantage.

(4) If the Board, after a hearing, finds that the agreed charge is undesirable in the public interest on the ground that it is unjustly discriminatory against any person complaining against it or places his business or any other form of transportation services at an unfair disadvantage or on any other ground, the Board may make an order varying or cancelling the agreed charge or such other order as in the circumstances it considers proper.

(5) When under this section the Board varies or cancels an agreed charge, any charge fixed under subsection (10) of section 32 in favour of a shipper complaining of that agreed charge ceases to operate or is subject to such corresponding modifications as the Board determines.

In amendment thereto, Mr. Green moved, seconded by Mr. Hamilton (*Notre-Dame-de-Grace*),

That the new section 33 to the Transport Act, proposed by Mr. Langlois (*Gaspe*), be amended by inserting immediately after the words "by water or rail" in 33(1) (*a*) the following: "or association of motor vehicle transport operators".

Mr. Green's amendment was resolved in the negative on the following recorded division:

Yeas: Messrs. Green, Hahn, Hamilton (*Notre-Dame-de-Grace*), Hansell, Howe (*Wellington-Huron*), Johnston (*Bow River*), Montgomery, Murphy (*Lambton West*), and Stanton—9.

Nays: Messrs. Batten, Boucher (*Chateauguay-Huntingdon-Laprairie*), Cameron (*Nanaimo*), Carrick, Carter, Cavers, Gourd (*Chapleau*), Harrison, Healy, Herridge, Hosking, James, Kickham, Lafontaine, Langlois (*Gaspe*), Lavigne, McIvor, Meunier, Nicholson, Purdy, Viau, and Villeneuve—22.

The proposed new section 33 of the Transport Act was accordingly adopted.

Clause 1 was adopted, as amended.

The Preamble, the Title, and the Bill as amended, were adopted.

The Chairman was ordered to Report the Bill as amended to the House.

Mr. McIvor expressed the Committee's appreciation of the information and assistance tendered by the various witnesses.

At 9.40 o'clock p.m., the Committee adjourned to the call of the Chair.

E. W. Innes,
Clerk of the Committee.

EVIDENCE

WEDNESDAY, June 29, 1955.
11.30 a.m.

The CHAIRMAN: Order, gentlemen. We have a quorum. Mr. Coyne?

Mr. H. E. B. Coyne, Q.C., representing Irish Shipping Limited, recalled:

The WITNESS: Could I ask the reporter for the last couple of sentences of last night?

Hon. Mr. MARLER: You were talking about the Combines Act and I think I urged you to leave the Combines Act alone and go on with the agreed charges.

Mr. GREEN: It is very hard to hear, Mr. Chairman.

The WITNESS: I just have a few words to say with respect to the second application which we made to the board, an application for a declaration that the railways had not complied with the order made on the first application. With the committee's permission I would like to read three short extracts from that judgment. The first one is on page 7:

> While the former requirement of Conference membership as a prerequisite to the issuance of through bills of lading was more stringent than the proposed requirement of rate equality between ocean lines, nevertheless the objective of both requirements is obviously the same—to require uniform rate-making by the ocean lines.

I shall also read a few questions and answers which are given in the judgment from the evidence of Mr. K. M. Fetterly, Foreign Freight Traffic Manager, Canadian Pacific Railway Company:

> Q. So prior to August 31st, 1954, you were saying to Saguenay Terminals Limited 'We are not granting you through bill of lading privileges because you have not agreed on rates with the other lines'?—A. I think that is the meaning of it, yes. That is why it was in there, yes.
>
> Q. And today you are telling them 'We will grant you through bill of lading privileges provided you agree on rates', is that what you are telling them?—A. Provided they agree on rates we will grant through bill of lading privileges, yes. (Trans. p. 152).

After this second judgment of the board the railways did accord us through bills of lading privileges under an agreement from which was deleted the clause to which we objected. But we are still being discriminated against by the railway. During the course of the hearings I referred to Canadian Freight Association freight tariff No. 30 H. That tariff on its face says, and this is a through competitive export freight tariff on commodity rates:

> Applicable only on traffic covered by through bills of lading and forwarded by shippers who have signed conference agreements with steamship lines specified on page 2.

And on page 2 are given the names of the conference lines. That tariff is no longer in force. It has been superseded by freight tariff No. 30-M, but similar provisions occur in that tariff.

Now, I think from what I have said it is clear that the railways are hand in glove with the Conference lines. It is for that reason that the Irish Shipping Limited and Saguenay Terminals fear that if given an opportunity the railways will discriminate against them by agreed charges. The question may be asked how the railways could discriminate against these companies by agreed charges. They could do so in several ways. First, a provision could be introduced into an agreed charge that the shipper states and represents that he has signed Conference agreements with the following steamship lines, and then would follow the names of the lines belonging to the Conference; that is one way. The second is by making the Conference lines parties to an agreed charge.

By Hon. Mr. Marler:

Q. Would they be regarded as shippers?—A. No, sir.

Q. How could they be parties to an agreed charge?—A. Joined as carriers. They are not all subject to the jurisdiction of the board, neither are they carriers under the board Act.

Q. How could they be parties to the agreement then?—A. I do not think they would be proper parties to the greement. Nevertheless, it might be done and I would point out that the railways now have an application before the board in connection with agreed charge No. 70 in which they are doing exactly that. They are asking that certain steamship companies which are not subject to the jurisdiction of the board and are not carriers within the meaning of the Transport Act should be joined in agreed charge No. 70. That application is still before the board.

The next point is that the companies I represent have no remedy if an agreed charge discriminates against them and in favour of Conference lines. Subsection 1 of section 33 begins:

> Where an agreed charge has been in effect for at least three months any carrier or association of carriers by water or rail or (*b*) any association or other body representative of the shippers of any locality.

These companies of course are not shippers, and neither of them is a carrier within the definition of carrier which is contained in the Transport Act. So they have no remedy under this subsection.

Q. They would have no remedy at present either?—A. Yes, sir. They have a very effective remedy. It is true that under subsection 7 of section 32 of the present Act—

Mr. GREEN: The Railway Act?

The WITNESS: This is the Transport Act. Under that section they are not mentioned. Perhaps I had better read the section.

Mr. HABEL: Do not bother.

The WITNESS: Under subsection 7 of section 32 of the Transport Act—

Mr. MURPHY (*Lambton West*): It is difficult to hear.

Mr. CAVERS: Some of the members of the committee are having difficulty in hearing. I wonder if it would be better if you would stand, Mr. Coyne.

The WITNESS: It is true that neither of these companies has a legal right under this subsection to be heard in opposition to the application, but first of all they have this protection that the board has to approve an agreed charge before it goes into effect. Now the examination of the board is very effective. If they saw any provision that seemed to them to be strange they would call for an explanation and if the explanation was not satisfactory they would not approve it.

Secondly, notwithstanding we have no legal right to be heard we can write a letter to the board and draw the board's attention to anything in the agreed charge which we think is objectionable and the board has power to act and undoubtedly would if there was anything objectionable in the agreed charge.

Mr. JAMES: Could you still write that letter under this new Act?

The WITNESS: The company has to go to the minister first and he has to give leave. The board has no power and is placed in a strait-jacket.

Hon. Mr. MARLER: It is not placed in a strait-jacket; it is not there at all.

The WITNESS: Exactly, it has no power.

Mr. BYRNE: Could not the minister send it on to the board?

The WITNESS: Yes, I was going to come to that point in a moment. I would like to mention three other points in connection with subsection 1 of clause 33 of the bill. The first point is that a complainant cannot go directly to the board. He must complain to the minister who may refer the matter to the board. In other words, what it amounts to is that a complainant must obtain leave of the minister before taking proceedings against the railways. A few years ago legislation was passed making it unnecessary to obtain leave before taking proceedings against the Crown. Apparently more deference is to be paid to the railways than to the Crown.

The second point is that the minister will exercise quasi judicial functions and there is no appeal from his decisions. It is not fair to the minister that he should be called upon to perform such functions. He is too closely associated with the Canadian National Railways both in fact and in the public mind. I am sure that the minister would try to be impartial but the question is what would be the feelings of a complainant whose complaint was dismissed? There is an old saying and a very true one that it is necessary not only to do justice but that justice should also appear to be done.

The third point is that an individual shipper has no rights under this subsection.

Hon. Mr. MARLER: He never has had, has he Mr. Coyne—or under the one on which it was based.

The WITNESS: You mean the former section 33?

Hon. Mr. MARLER: Yes.

The WITNESS: No. But he had rights under subsection 7 of section 32. As the Act now stands he has rights. Under this subsection he has no rights. I am speaking of the individual shipper.

Mr. HOSKING: How do you mean—he has no rights?

The WITNESS: I mean he has no remedy if he thinks he is discriminated against.

Hon. Mr. MARLER: You say he has no remedy; that is certainly going beyond the terms of the bill because under section 32 subsection (10) he has got a remedy.

The WITNESS: He has a remedy in certain conditions—if he is served by the same carrier or carriers who are in the agreed charge. For example, I was referring to agreed charge number 70 and the application which is now made—in fact it was made about six months ago by the railways. Nothing has been heard of it and no order of the board has been made. That application was to join certain steamship companies in the agreed charge—certain steamship companies over which the board has no jurisdiction; they are not carriers under the Transport Act. It is, I think, fairly obvious what the

reason for the delay is. It would put the board in a very embarrassing position if it approved that amendment besause if another shipper appeared and said "fix for me the same charge under this subsection which the minister has referred to" the board would be without power to fix that charge for him.

Another instance is where the shipper is on another line than the line or lines of railway concerned in the agreed charge—for example, if you have a manufacturer in Brantford and a manufacturer in Hamilton who are the shippers named in an agreed charge. They are on the Canadian National and Canadian Pacific Railways. If this amendment goes through that agreed charge would go in automatically. Now suppose there is a small shipper in Waterford who is served by the Toronto-Hamilton and Buffalo railway and the New York Central Railway. What power has the board under this subsection to fix the charge? The board has no power because they are not the same carriers. I mean to say the carriers named in the agreed charge are the Canadian National Railway and the Canadian Pacific Railway—and the railways that serve the complainant shipper are the Toronto-Hamilton-Buffalo and the New York Central.

Mr. CARRICK: Mr. Coyne, may I ask you a question? In complaining about the legislation, that while the association for the shippers has the right to complain an individual shipper has not the right to complain, are you making that representation on behalf of any shipper?

The WITNESS: No, but I thought it was appropriate to bring this matter to the committee's attention. It does not particularly concern us but I thought it was appropriate to bring the point out.

Mr. CARRICK: Thank you.

The WITNESS: Now, one suggestion that I have is to amend subsection 1 and put in a very simple provision.

Mr. GREEN: You mean clause 33 or clause 32?

The WITNESS: Clause 33. Subsection 1 of clause 33. The suggestion is to amend Bill No. 449 by deleting subsection 1 of section 33 and substituting therefore the following subsection:

1. The board may vary or cancel any agreed charge.

That does justice to everybody and if the railways object to it I suggest that they are very unreasonable.

Mr. CARRICK: That would have the effect of cutting out the complaints to the minister first and his referring them to the board; they would go right to the board and anybody could complain.

The WITNESS: Anybody could complain. The objections that would be made to that are of course that there would be a flood of complaints. I think that fear is exaggerated. The position would be very materially changed from what it is at the present time. At the present time everyone who does not want an agreed charge has merely to put in an objection and there has to be a hearing and so on with the result that there is probably a delay of months. But under these amendments the agreed charge goes into effect immediately.

Now, whatever objections are made, that agreed charge stays in, unless the objections are sound and the board disallows it. There is not the same incentive by any means to put in a complaint under Bill 449 that there is at the present time.

By Mr. Hosking:

Q. Is there anything wrong with the principle that if the shipper agrees with the railroad and enters into a contract, that it should start right away,

and that it should continue until it was found that it was no right?—A. We have no objection to that. Our objection is that we have not any redress if there is some provision in that agreed charge which operates against us, and we say that the same thing applies to the individual shipper.

Q. Does the shipper not sign this agreement and agree to it?—A. I am speaking of an individual shipper who is not a party to the agreement, but who is discriminated against, as he thinks.

Q. That shipper should not be in a position to jeopardize an agreement and delay it, and hold it up.—A. He cannot hold it up; it goes into effect at once.

Q. Then what is wrong with the bill?—A. If the bill goes through, and the agreed charge goes into effect at once, our objection to the bill is that we have no right to go before the board and show that that agreed charge discriminates against us, and neither do a large number of shippers have that right, I mean individual shippers.

I might also add that section 33 as it stands now in the Railway Act has been a dead letter, and I would suggest that sub-section 1 of section 33 in the bill, if it is passed in its present form will practically be a dead letter. No railway is going—at least it would be a very exceptional case in which any railway or water carrier is going to make a complaint. They work together. The individual shipper cannot complain.

What I think Mr. Justice Turgeon had in mind in speaking of an association of shippers, to quote his exact words, was this:

> Any organization or other body representative of the shippers of any locality.

That is rather peculiar phraseology, and I think from his report that it is quite clear that he was thinking not of a shipper, that is, of a consignor. A shipper, as defined in the Act, is a person who either sends or receives goods. Mr. Justice Turgeon, I think, did not have in mind a consignor of goods. He was thinking of a consignee.

For example, I think what he had in mind was such a situation as this: there might be an agreed charge for an export tariff, let us say, from Toronto to Halifax and the merchants—I did not intend to say an export tariff, simply an ordinary tariff covering the charges on goods from Toronto to Halifax—and the merchants in St. John might say that they were discriminated against. Therefore an association of those merchants could apply and complain to the board that the agreed charge was unjustly discriminatory, and placed its business at an unfair advantage. Then the minister might find that it was in the public interest—public interest meaning the interest of the public of that locality.

That is the exact situation which I think Mr. Justice Turgeon had in mind. I have great respect for Mr. Justice Turgeon, but I do not think he realized that the previous sub-section allowing the board to fix rates for shippers does not cover all complaints which shippers might make. He did not have in mind such an example as I have already given to you. He did not intend to be unjust. He thought he was covering everything by the two provisions, but with all respect to him, I do not think he did.

I forgot to say that in case the committee is not in favour of the amendment that I have suggested, my friend, Mr. Jean Brisset who is with me has drafted an amendment which will serve our purpose, that is, the purpose of the two companies which we represent, although I do not think that this covers the general situation as well as the amendment which I have suggested.

Would it be permissible for Mr. Brisset who has drafted a second amendment, to present it to the committee?

Mr. CAVERS: Does Mr. Brisset wish to address the committee?

The WITNESS: Yes.

Mr. CAVERS: And you are now finished?

The WITNESS: Yes.

Mr. GREEN: I would like to ask a few questions of Mr. Coyne.

The CHAIRMAN: Perhaps you had better hear Mr. Brisset first.

Mr. GREEN: I understand that this is an alternative amendment which ties in with the submission made by Mr. Coyne.

The CHAIRMAN: Come up to the front, Mr. Bisset, please.

Mr. Jean Brisset, Q.C., Montreal, representing Irish Shipping Limited, and Saguenay Terminals Ltd., Called:

The WITNESS: Mr. Chairman, Mr. Minister and gentlemen: before I submit to you the amendment which I would suggest to the committee, I would like to say a few words by way of explanation because unless I do so I think it would be very difficult to understand the purport of the amendment which I shall submit. In doing so I shall attempt to crystallize the issue with which our principals are concerned and which I submit is of vital interest to all Canadian exporters.

Let me say at the outset that we are not attacking the agreed charge rate-making powers which the railways are seeking under the bill which is before you, and that we recognize that the railways must have freedom of competition within certain bounds, but what we challenge is the right of the railways to resort to practices damaging the business of unregulated carriers that are not competing with them in any transport of goods which is sought to be made the object of an agreed charge. This might appear to you at this stage to be rather a cryptic statement and before I explain it I wish to put before you certain facts which will assist you to understand our position. I want to tell you what Saguenay Terminals Limited is, and these are the facts. It is a Canadian corporation that operates 12 ocean vessels, the majority of which were purchased from the Canadian government after the war and it also operates, including these vessels, about 70 ocean-going vessels in various services including hauling bauxite from the British West Indies to Port Alfred and these services are the following: a general cargo service from eastern Canadian ports to the United Kingdom and continent in which they are in competition—and that is the important thing to remember—with British lines and particularly the Canadian Pacific Steamship Company which, as you all know, is a British corporation, a subsidiary of the Canadian Pacific Railways. The other service is a service from eastern Canadian ports to West Indies ports and South America in which they are in competition with the Canadian National Steamships owned by the Canadian National Railways and with various foreign companies, American and so forth. The third service is an inter-coastal service between eastern Canadian ports and western Canadian ports and vice versa, in which they would appear at first sight to be in competition with the railways, but I will say to you at this point and I will develop it later that it is not entirely so. They also act as general agents for the Constantine line Canadian service from the Great Lakes to Newfoundland in which they are in competition with the railways for this part of the voyage which is from the Great Lakes to Montreal, but are not in competition with the railways from Montreal to Newfoundland during the navigation season.

What we wish to safeguard against is that under the guise of agreed charge contracts the railways resort to practices favouring Saguenay's competitors and particularly the Canadian Pacific Steamships and the Canadian National Steamships to the detriment, of course, of Saguenay Terminals Limited but also to the detriment of Canadian shippers at large and without direct benefit to the railways as railways and often at a loss to the railways.

Now, you will ask me how the railways can do that. I will tell you that they have done it in the past, they are still doing it, and they will have the opportunity of doing it under the agreed charge mechanism, and whereas prior to this bill coming into force we had redress before the Board of Transport Commissioners and did obtain redress we will not be able to obtain it if the bill goes through without the amendment which I would suggest.

In order to assist you to understand how they can do it under the agreed charge mechanism, I want to explain to you how they have done it in the past. Some years ago the railways had devised a mechanism which we call a through bill of lading the purpose of which was to promote Canadian export trade. Any Canadian shipper could go to the railways and say, "I have a shipment for overseas and I want a through bill of lading," and he would get it whether it was shipped via C.P. Steamship, Canadian National Steamships, the Conference, Saguenay Terminals or Irish Shipping Limited. Everything was serene up until the end of 1953 when the railways turned to the Canadian shippers and Saguenay Terminals Limited and Irish Shipping and told them, "We will grant through bill of lading privileges to Canadian shippers only if they ship via Conference, via C.P. Steamship and via C.N. Steamship and via other members of the various Conferences."

Mr. CAVERS: Who are the other shippers who are within the Conference other than C.N. Steamships and C.P. Steamships?

The WITNESS: I want to explain to you what a Conference is. A Conference is an inter-ocean carrier organization—

Mr. CAVERS: I understand that.

The WITNESS: —the main purpose of which is to fix and maintain rates. Now, at this point I am not going to discourse on the economics of this policy although many economists will tell you that this policy is a sound and beneficial one at times and I will not quarrel with that. The British lines that compete with Saguenay Terminals Limited and who are members of the Conference while Saguenay Terminals is not—and I refer in this case to the United Kingdom east bound Conference, do fix and maintain rates; that is their business. We are not quarrelling with them in this respect but when we were faced with this decision of the railways we appealed to the Board of Transport Commissioners and challenged the right of the railways to say to Canadian exporters, "You will ship to the United Kingdom via Conference lines rather than through Saguenay Terminals Limited, and to Ireland via Conference lines again rather than via the Irish government line." The board agreed with us and said to the railways, "You must stop this discrimination." Well, what did the railways do? They immediately turned to the shippers and to Saguenay Terminals Limited and to Irish Shipping Limited and said, "All right, we will grant you through bills of lading provided you—Saguenay Terminals Limited and Irish Shipping Limited—charge the same rates as the C.P.R. steamship and other members of the Conference are charging." I might say by the way that our rates were lower than those of the Conference lines. Again we appealed to the Board and challenged the right of the railways to dictate what our ocean rates should be and we said to the board, "We wish to have the unfettered right to charge what we want and to fix our own rates. We believe in freedom of trade. The law of supply and demand is our guide in our

rate-making and as our rates are lower than those of the Conference we want the Canadian exporters to benefit from the lower rates and we will not submit to the dictates of the railway that we should change our rates—increase them as a matter of fact—to conform with those of our competitors, particularly the Conference in that trade."

The Board again agreed with us and said to the railways: you have not obeyed us; you must stop this discrimination and you must grant through bills of lading to shippers who ship via Saguenay and Irish Shipping even though these two lines might charge less or might charge different rates from those of Canadian Pacific Steamships or other members of the Conference.

I think, gentlemen, you would have thought that this would have been the end of the matter. Well, we have been told that the railway's management is honest, and I concede that, but I think the railway's management also has one fault—they are very stubborn. In the face of this decision the Canadian Freight Association—while the proceedings were in progress, and I understand the Canadian Freight Association is an organ of the railways—started to publish what they called through rate tariffs. I understand that at the present time there are at least seven or eight of these through rate tariffs in effect. I will not attempt to quote you verbatim what the tariffs say, but to paraphrase I will take a particular case of one shipper: you, Mr. Shipper, in this locality, say Winnipeg, we will charge you a rate of $20 a ton for a shipment of such and such a commodity from Winnipeg to the United Kingdom, say Liverpool, on through bills of lading. Then you read on in the tariff and you see this: provided you ship on Conference vessels, that is C.P. steamships and so forth.

We wrote to the Canadian Trade Association and told them: you are again disobeying the Board's orders. Saguenay Terminals and Irish Shipping are entitled to participate in those through rates. You have no right to confine those through rates to specific lines, our competitors. This has been going on for two months and we are told the matter is still under consideration and we will certainly, I imagine, be instructed to appeal again to the board.

Now, if you analyze this through rate that was quoted to the shippers—I am speaking of this example I just gave—you will see that the rate as I said is $20. It includes the land movement from Winnipeg to seaboard, say Halifax, and includes the ocean movement from Halifax to the United Kingdom. Now, if you compare—and I am just giving figures out of the blue—the standard rail rate from Winnipeg to Halifax you will find that the rate is $12. If you look at the rate charged by Conference Steamships for the ocean movement you will find that the rate is say again $12, $24 in all. However the rate quoted is a rate of $20 on this through movement. The railways in conjunction with the steamship line have made a reduction somewhere. Now Saguenay Terminals may for this same movement, as compared to C.P. Steamships' rate, have carried this commodity for $10. If you adopt the $12 land movement freight and the $10 Saguenay freight you would still get $22, whichis higher than the $20 through rate offered by the railways in their through rate tariff. Therefore, this through rate tariff involves undoubtedly, although I do not know the real division between the railway and the C.P. Steamships, a reduction on the part of the railway. What is that reduction? Why is it given? It is given to favour the steamship line and enable the steamship line to get the movement instead of Saguenay Terminals or Irish Shipping. In this way the railways indirectly attract the shippers who previously might have been shipping through Saguenay Terminals to ship under this through tariff. What

are the railways gaining? Nothing; they are losing. If the movement continued to go by the Saguenay they would have charged their normal standard rate of $12. So they grant this reduction in reality to favour the competitors of the Saguenay Terminals in the ocean movement.

Now, this is what has happened in the past. How can the same thing be done today?

Mr. MURPHY (*Lambton West*): Would the witness just clarify the last two or three sentences? I cannot understand that differential. Who gets it, the shipper?

The WITNESS: The shipper gets a rate of $20 in the end.

Mr. CAVERS: He saves $4?

The WITNESS: He saves $2, if the railways have granted a reduction in their standard freight rates. I do not know what it is; it might be a reduction of $4. That $20 might be divided $12 to C.P. Steamships, which is C.P. Steamships' normal rate, and $8 to the railway. We do not know. However, if in fact the railways had reduced their rates from $12 to $8 and were permitting the shipper to ship by Saguenay at $10 a ton, the shipper would have a combined rate of $18 instead of $20.

Now, what can the railways do under the guise of agreed charges? I would like to give you an hypothetical case as a concrete example. Let me place myself in the position of the foreign freight traffic agent of the C.P.R. I know that there is a shipper in Winnipeg who is shipping a large quantity of cargo to the United Kingdom. He is paying the railways at the present time for the land movement from Winnipeg to eastern Canadian ports say at the standard rate of $12 a ton. He is paying on the ocean rate to Saguenay Terminals $10 a ton, $22 altogether. The freight traffic agent of the C.P.R. will go to this shipper and will tell him, "We are prepared to enter into an agreed charge with you for your land movement from Winnipeg to the eastern seaboard. You have been paying so far $12 a ton. We are prepared to negotiate an agreed charge of $8 a ton provided you give us 100 per cent of your traffic, and provided also that you ship via Canadian Pacific Steamships and no longer by Saguenay Terminals."

Suppose the freight rate of Canadian Pacific Steamships is $12 a ton; this will give you a combined rate of $12 plus $8, amounting to $20 Well, the shipper is already paying $22. He might immediately say to the railways "I find your agreed charge for the land movement very interesting and very beneficial but why do you not allow me to continue shipping by Saguenay Terminals Limited, because with them I pay only $10 a ton for the ocean movement." The C.P.R. agent will tell him in that case "we are sorry, sir, but if you do continue with Saguenay Terminals you will not get our agreed charge rate of $8 a ton. You will have to pay the normal standard rate of $12 a ton." So the shipper takes it—he accepts the charge. Who can complain? The shipper is not going to complain because he gets a rate of $8 from the railway company for his land movement when he was paying $12 before and another shipper might still be paying the same charge. Saguenay Terminals cannot complain either. They are not a regulated carrier under the Act. So the matter remains in the status quo and the arrangement, in the example I have given, is in fact for the benefit of the Canadian Pacific Steamship Company.

This situation as the members of the committee can appreciate is fraught with danger and that had been realized years ago in the United States by the Interstate Commerce Commission which has ordered that all railway operations must be divorced from steamship operations. In other words railway companies in the United States cannot own and operate foreign-going steam-

ship companies because it is too apparent that they will be inclined to further the interset of their own steamship company in fixing their land or freight rates to the detriment, after all, of all exporters.

By Mr. Hosking:

Q. The minister has assured us that the railways will not handle anything at a loss under these agreed charges If they handle that freight at $8 a ton the railways are not handling it at a loss.—A. I am not saying that the rate quoted in my example would be a losing rate. They might reduce their rate and still make a profit, but the reduction in the rate on the land movement is simply for the benefit of the ocean carrier which they favour and which is placed in a more favourable position to compete with the services of Saguenay Terminals Limited.

Q. Is not our whole idea to get costs of transport across Canada down to the cheapest possible rate so that it benefits our trade?—A. Exactly, and that is what I was saying the railways by their practices are preventing. They reduce their rate all right, but they do not make the same reduction, if the shipper does not ship via their selected lines.

Q. If the Canadian Pacific Railway Company is prepared to do a package deal and if by doing that the shipper gets a better rate, isn't that a good thing for whoever is sending those goods and also for the Dominion?—A. No. I will explain that, if I may, by reference to the example which I gave earlier—

Q. They would not be prepared to make that reduction on just the rail shipping, but they would be prepared to do it on a package deal. Is there anything wrong with that?—A. There is nothing wrong with that, so long as you do not prevent the Canadian shipper from getting a still lower rate if the railways, with regard to the land movement, were willing to make the same reduction and allow the shippers to get the cheaper ocean rate from the competitors of the steamship lines favoured by the railway.

Q The point I am trying to make is this: if they do get a shipment, say, to Halifax the railways are going to handle it anyway. Why should they not make the rate cheaper so that if the shipper wants to make a package deal he can? What is wrong with it?—A. It is wrong in this sense that it prevents the shipper from getting a still better deal.

By Mr. Cavers:

Q. You cannot provide any land transportation at all—that is not available in your service. You are limited solely to your steamship service?—A. Absolutely.

Q. So that if a person wants to take advantage of a package deal including both land transportation and sea transportation, putting them both together for the sake, let us say, of convenience, why should he not do that?—A. That is quite right provided the railways permit them to make the same package deal with other lines, and I am speaking of ocean lines that are quoting rates even lower than those of the lines which the railway is favouring.

Suppose you are shipping now overseas via Saguenay Terminals at $10 a ton. You are paying $10 for your land movement. The railways approach the shipper—and the railways, as railways, are only interested in land movement. They come to him and say "we will carry all your goods at a better rate than you have paid so far. We shall carry them for $2 a ton less." You will say "all right I am very pleased with that and we shall benefit from that reduction, and with the $10 which I am paying to Saguenay Terminals my freight will cost me $18." But the railway will say to you "oh no, you won't ship via Saguenay Terminals, you will ship via C.P.S. at $12 instead of $10.

The CHAIRMAN: I think the members of the committee understand that.

By Mr. Carter:

Q. This situation which you have been speaking of is hypothetical as I understand it. You prefaced your remarks by saying you did not know how this particular rate was divided up—whether, if it was $20, it would be 10 and 10 or 12 and 8.—A. We do not know because the railways do not publish those figures.

Q. But you are assuming that it is in the proportion of 8 and 12—8 for the land and 12 for the sea route. Could it not be the other way around?—A. Yes.

Q. In that case there would be no cheaper rate for a person who ships via Saguenay?—A. I appreciate it could be, but I assure you I am confident in my own mind that it is not so.

Q. Yes, we might be confident in our own mind, but you have said nothing to prove this. It is purely supposition.—A. The best way I can convince you, sir, is by referring again to the first struggle we had with the railways in connection with the through bills of lading when the shipper were told "if you want to get your through Bill of Lading you will have to ship via conference lines and not through Saguenay Terminals Limited."

Q. There is nothing wrong with that, is there?—A. There is nothing wrong with that—for the ocean lines to charge more if they want to, but I see no justification for the railways telling you, sir, that if you want to ship to England you must ship on a ship of a line which is charging more than Saguenay would be charging you.

Q. How do we know that? There is no proof that they are charging more. If they are going to give a package deal it is only right that they should insist on getting the full benefit of it and carry the goods the whole distance. There is nothing in what you have said which proves that the shipper shipping by rail to the seaboard and then via Saguenay is going to result in a saving to the shipper. You have built up a case on a supposition—purely of supposition—of the division of that package rate. We do not know how it is divided.

Mr. CAMERON (*Nanaimo*): Mr. Chairman, could we not ask some questions of the witness instead of having so much argument?

Hon. Mr. MARLER: Let him finish his exposition.

Mr. CAMERON (*Nanaimo*): Well, let us see that he does finish and that we do not have a diversion in the meantime!

The WITNESS: Well, they can discriminate—the railways, I mean, can discriminate under the guise of agreed charges against the non-regulated carriers by fixing agreed charges which are based upon the same mechanics as through rates. In other words, the railways will say "We will charge you so much for a movement, let us say, from Winnipeg to the United Kingdom, provided you ship again via conference lines including the Canadian Pacific Steamships."

Well, there again the railways are favouring one line or lines as against Saguenay Terminals in this case, or Irish Shipping Limited. We say that the railways have no right to favour one shipping line or lines rather than another. The shipper should be free to make his contract with whosoever he wishes for the ocean carriage.

He has to deal with the railways for the land movement. He can accept an agreed charge for the land movement from the railways to move all his commodities to seaboard; but the railways should not make it a condition of their agreed charge that he will ship via one line rather than another. Let the shipper be free to find the best bargain he can get as far as the ocean movement is concerned.

You have the same situation at the present time in Canada on shipments to Newfoundland. The railways have published a tariff for through shipments to Newfoundland. However, they say that this through tariff is only applicable if the shipper ships via certain lines which are named in that tariff. He will not get that through rate if he ships otherwise. And in this manner the railways are preventing Constantine Line from participating in the movement of goods from Montreal to Newfoundland, even though Constantine Line might be ready and willing to quote lower rates which, in combination with land rates, would give an overall cost to the shipper lesser than the amount he has to pay under the through rate. We submit that this situation should be remedied and that it can only be remedied by an amendment to clause 32 of the bill.

I have with me a number of copies of the amendment.

Mr. GREEN: I wonder if we could see those copies?

The WITNESS: It will read this way:

Insert immediately after subsection (12) of section 32 the following subsection:

(13) The Board may disallow any agreed charge,

(*a*) which is in part for transport by water in respect of which Part II of the Transport Act is not in force; or

What is that intended to provide for? It is intended to provide against an agreed charge which is developed by adopting the through rate mechanism. We say as a general principle that the railways under the guise of agreed charges should not make through rates or offer through rates which involve a movement by water which is not regulated under the Transport Act.

We recognize the right of the railways to make a through rate and an agreed charge from, let us say, a point inland involving also a water passage or a sea passage, let us say, from the Great Lakes but not below the west end of the island of Orleans which is a regulated area. That is something which we know that the railways have the right to do; but they should have no right to adopt a through rate which would involve, for instance, a sea passage from an eastern Canadian port to any foreign port; and if they were to do so, the board, if we apply to it, should have the power to disallow the agreed charge. I do not think it was the purpose of the legislation to permit such an agreed charge.

Perhaps the railways will tell us that they do not intend to make any such agreed charge. If that is so we will feel very much more secure and happy in the light of our previous experience with them if this provision is in there.

Subparagraph (*b*) reads as follows:

(*b*) which discriminates unjustly in any way against any person engaged in such transport by water.

What is that intended to guard against? It is intended to guard against the railways making an agreed charge on a straight rate basis say from Winnipeg to Halifax not dictated by competitive conditions or not compensatory but simply for the purpose of favouring another line and injuring the business of a carrier which is not regulated under the Act, and the example I have given you is that the railways would go to a shipper and say, "We will make an agreed charge with you for all your shipments at $8 instead of the normal rate, provided all your export shipments are moved by Conference Lines."

I readily grant to you, gentlemen, that this amendment could allow Saguenay Terminals Limited to apply without going to the minister for the disallowance of an agreed charge which the railways might make to compete with their inter-coastal service. But I submit to you that for the moment you should accept my proposition as a premise that according to the principles of economics in transportation the railways could not make an agreed charge to cover goods moving from the east coast to the west coast or vice versa that would be a compensatory one if it were below or competing with Saguenay rates on this particular trade.

Let me just give you the history and the development of the inter-coastal service in just a few words. About five or six years ago there was a line called the Monsen Clarke Company which inaugurated such a service and developed it. When it was developed the railways came in with competitive tariffs and as a result subsequently the line had to fold up and discontinue its service. As soon as this happened the railways increased their rates. I cannot prove it to you gentlemen here, but I assume it is because they were taking a loss on that rate. As soon as they increased their rates on these commodities the trade most likely vanished.

Mr. GREEN: What route?

The WITNESS: The inter-coastal service between west ports and east ports and vice versa via the Panama Canal. Some five years ago—in 1951, I think—Saguenay Terminals Limited inaugurated a similar service and revived the trade. If the railways quote or negotiate agreed charges to cover the most important commodities in their service, that service will, of course, have to be withdrawn and possibly the same thing would happen again. The railways will increase their rates, and the trade will again wither. I do not wish to imply that what I have said applies to all commodities that may move on this service, but it applies to quite a number of the important ones.

Mr. MURPHY (*Lambton West*): Mr. Chairman, I wonder if the witness would complete that part of his recent testimony—it is not clear to me. Since this new service was initiated was there any increase in the rates after the other company folded up?

The WITNESS: Since the service of Saguenay Terminals Limited was inaugurated the railways have, in fact, on certain commodities diminished their rates and they published competitive rates and they got that part of the business back, but they have not—I would not like to make a statement of which I am not sure at the present time and I would have to consult with my clients—but I do not think the railways have underquoted or quoted competitive tariffs on all commodities moving on that service seeing that the service is still in existence and is a regular service. If the railways were to quote or negotiate agreed charges in respect of commodities moving on this service I concede to you that Saguenay Terminals Limited could not say, "We are discriminated against, because the agreed charge is competitive." That is no reason to attack the charge. It is good business as far as the railways are concerned. They could not say the rate or the agreed charge is unjust because it is lower than ours and we lose the business—no, we could not say that. However, I submit to you, gentlemen, that they could say to the railways, "This agreed charge which you have fixed is unjust because it is not a compensatory one; you are losing money on that traffic and therefore you should not be allowed to quote this agreed charge and put us out of the service." Now, could that be done by Saguenay Terminals unless that amendment were there? No, I say they could not do it under section 33 because they are not a regulated carrier. And, gentlemen, you should not expect that the shipper or the shippers who benefit from that agreed charge which I say is lower than the Saguenay Terminals' rate will go to the minister and say to the minister: we lodge a complaint

against this agreed charge. I think you will see the irony of the situation, and certainly the shipper is not going to go to the minister and say: we object to this charge because it is not compensatory and because the railways should charge more to us. It is inconceivable. So nobody would or could attack the charge. I sympathize with the truckers on this score if they are not allowed to object to an agreed charge because no shipper will surely complain to the minister that an agreed charge should be cancelled because the railways are not getting enough revenue because the charge is not compensatory.

Mr. McIvor: Do you not think when the railway carries goods—

Mr. Nicholson: Have we reached the question stage? Is the witness through?

The Chairman: I think so.

The Witness: I have one further remark. I will concede to you gentlemen—and I speak for Saguenay Terminals and Irish Shipping—that we did not appear before the Turgeon royal commission. There was no submission made on this problem, and I am speaking of the practices of the railways who favour steamship lines to the detriment of other lines, because until the through bill of lading bombshell exploded in 1953 we never expected the railways would resort to such practices; they had not done so in the past. I think with all due respect to Chief Justice Turgeon, in spite of all his wisdom and foresight, he did not foresee that the railways would resort to such practices.

In concluding my remarks may I, Mr. Chairman, just address a word especially to the minister here? The minister will certainly recall that before he came into office the Canadian government permitted Canadian ship owners to transfer their ships registered in Canada to the British flag in order that the cost of operating those ships be lower so as to permit Canadian ship owners to compete with other British lines and other foreign lines. Well, I think the minister would be in a rather invidious position today, after his government having allowed the Canadian ship owners to compete with British lines, if he were to support the railways in their practices preventing Canadian shipping lines, like the Saguenay Terminals, from competing with the British lines on the UK trade. That is what the railways are actually doing in forcing shippers, indirectly if you wish, to ship on British conference vessels.

Mr. Hosking: Would it not be possible to have this committee meeting transferred to room 497 or some other smaller room where we could hear?

The Chairman: No. There is no suitable room.

Mr. Nicholson: Would you allow that request? I understand this is the only committee meeting at present.

The Chairman: There is no room, the secretary informs me, large enough to handle this number of people.

We will adjourn now until 2.30 to meet again in this room.

AFTERNOON SESSION

JUNE 29, 1955.
2.30 p.m.

The CHAIRMAN: Gentlemen, we have a quorum. Are there any members of the committee who would like to ask questions of Mr. Brisset?

Mr. Jean Brisset, Q.C., representing Irish Shipping Limited, recalled:

By Mr. Cameron (Nanaimo):

Q. Mr. Brisset, I gather that your clients are not members of the North Atlantic Shipping Conference?—A. No, they are not. I might state here that Irish Shipping applied to become a member of the Conference but were refused. I might say that in the United States a similar application had been made to a Conference. The law is such in the United States that the application could not be turned down. Saguenay Terminals are not members of the Conference because they prefer to be independent.

Q. You did not apply to become a member?—A. Saguenay Terminals?

Q. Yes.—A. No. The company, I am instructed, preferred to be independent.

Q. Would your company be eligible for membership if you applied?—A. I am not too familiar with the rules of the Conference but I understand that in order to be accepted there has to be if not a unanimous vote among all the members at least a majority vote.

Q. They have an agreed scale of charges among the membership I assume?—A. Yes. Their main purpose is to fix and maintain rates which would apply in respect to each of the commodities named in their tariff which by the way is not made public.

Q. Of what registry are the ships of the Saguenay Terminals?—A. Saguenay Terminals own twelve vessels which formerly were under Canadian flag, which under the arrangement that was made between the Canadian government and the British government have been transferred to the British flag under the terms and conditions set by the Canadian government to enable the ships to be operated at a lower cost and thereby to compete with other British lines and also other foreign lines. Now, Saguenay Terminals also operate a number of vessels under charters of various nationalities. You will appreciate, of course, and perhaps this is a comment of my own, that to buy or purchase a number of vessels, numbering perhaps 50 or 60 involves a substantial capital investment and I believe Saguenay Terminals since they purchased their six or seven vessels from the government after the war have gradually increased their own fleet over a period of nine to ten years.

Q. Earlier in your evidence you were telling us that your company would have been able to offer shippers a lower rate than the members of the North Atlantic Conference were offering. Could you tell us how that would be, how would your working conditions, safety regulations and so on compare with those of the members of the North Atlantic Shipping Conference?—A. That is a question, sir, which I am afraid I am not competent to answer. We have here a representative of the Saguenay Terminals Limited.

Hon. Mr. MARLER: Is that not outside of the scope of the agreed charges? Could we not take it as a fact that the non-Conference rates may be lower than the Conference rates and could we not come back to merely dealing with the effect on the scheme of agreed charges?

Mr. CAMERON (*Nanaimo*): The company says that the agreed charges with which we are dealing have been made to include a contract for the Atlantic as well.

Hon. Mr. MARLER: I do not think anybody has suggested that so far agreed charges have been made in this sense. As I understood the evidence, the fear which these two gentlemen have expressed is that such charges might be included in agreed charges if made pursuant to Bill 449.

By Mr. Cameron (Nanaimo):

Q. I understood Mr. Brisset to tell us that is what they actually had experienced.—A. I said that by using through rate mechanism the railways have by a subterfuge tried to obtain the same ends that they had before. In other words, forcing the shippers to ship through Conference lines. The way they have done that has been by publishing through rates which are only available to a shipper when he ships through the ocean lines that are named in that tariff and these ocean lines are all Conference lines.

Hon. Mr. MARLER: But that is not under the agreed charges?

The WITNESS: I will come to that. When the shipper wants to take advantage of the through rate he has to go to the office of one of the Conference steamship lines and there he is asked "Are you a member of the Conference; have you signed the Conference agreement?" If he says no, then the steamship line concerned or the Conference will tell him, "We cannot carry your goods at the through rate unless you sign the Conference agreement". So the shipper will sign the Conference agreement. I have here a sample of the agreement. Briefly it says that the shipper undertakes in the future to ship all his goods not only those that are covered by the through rates but all the other goods through conference vessels and at the rates set by the conference, and if he does not do that after signing this agreement he is subject to a penalty. I will read the clause:

> The merchant or shipper will be liable to the carrier for liquidated damages, equal to twice the amount of freight that would have been payable under this agreement in respect of the shipment constituting the violation.

In other words, a shipper to get his through rate now has to become a member or a signatory to the Conference agreement and ship all his goods through Conference lines and no longer through independent lines like Saguenay Terminals Limited. And your through rate mechanism can be made use of in the agreed charge device; that is what we fear.

By Hon. Mr. Marler:

Q. But Mr. Brisset it is not a fact that this has been done under the agreed charge legislation at present, isn't it?—A. It has been done—

Q. Can you not answer the question "yes" or "no"?—A. I understand by way of through rate tariffs.

Q. But it has not been done under agreed charges?—A. No.

By Mr. Cameron:

Q. May I ask a further question. Has there been to your knowledge shippers who have been denied agreed charge rates on shipments to an Atlantic port because they were not prepared to ship across the Atlantic in Conference vessels?—A. Yes. If they refused to sign the agreement they were not permitted to take advantage of the through rate.

Q. That is very definitely linked up with the agreed charges.

Hon. Mr. MARLER: I think the witness is misleading the committee quite unintentionally. What he is talking about are tariffs which are published by the railroads and it would seem, too, that there is a condition of these tariffs that the shipper must agree to certain conditions which Mr. Brisset has outlined. But those are not agreed charges under the Transport Act. They are operations of carriers under the Railway Act, and I take it from what Mr. Coyne said this morning and from what Mr. Brisset said this morning that the Irish Shipping Company and Saguenay Terminals have already been before the Board of Transport on these tariffs, but not on agreed charges because no agreed charges have been made pursuant to the Transport Act. With respect to the situation about which Mr. Brisset is complaining his complaint is I think that may be under this legislation which we are discussing something similar may take place. I think we should stay on the agreed charges. I think the witnesses have made their point abundantly clear and surely we should not have to go outside the question of agreed charges and cover the whole matter of shipping across the North Atlantic.

Mr. CAMERON: With all deference I am afraid I must disagree with you, Mr. Minister, because we should be very much interested in the final effects of any legislation which we are going to put into force and I want to know from if the Canadian National Railway and the Canadian Pacific Railway are going to use this legislation as part of an overall scheme or gathering into their own hands all the freight which is carried across the Atlantic.

Hon. Mr. MARLER: I think that is a perfectly proper question, Mr. Cameron.

Mr. CAMERON: That is why I have been pursuing this question with Mr. Brisset.

Another matter you brought up, Mr. Brisset, was the question of the permanence of the service. You told us that the railroads in th past in the case of one company reduced their charges until that company went out of business, and then raised them again. Could you give us specific information as to when this was done—immediately the shipping company ceased business or later—in other words when the rates were brought back to the former level. Is there conclusive evidence that that was the purpose of lowering the rates at that time?

The WITNESS: I do not have with me precise information as to the dates. I can only give an approximate answer to the question which has been asked. My information is that the rates were reviewed by the railways sometime after the Inter-Coastal Line had established its trade—not immediately after, but some time after—and that the rates were likely increased by the railways practically as soon as the line folded up.

Mr. CAMERON: Thank you.

By Mr. Hosking:

Q. I would like to ask Mr. Brisset a question too. Do you not think the object of this bill is to protect the interests of the taxpayers of the Dominion of Canada, the shipper who is exporting goods from Canada and the economy of the country as a whole? Is that not the idea of this bill?—A. I submit sir that that is the purpose behind this bill, and there should be safeguarding provisions which will prevent the purpose of the Act from being either disregarded or not attained because of the practices of the railways in favouring certain ocean transportation companies to the detriment of other and to the detriment in general of Canadian exporters.

Q. And the company which you represent is not a member of the North Atlantic Conference?—A. No, it is not.

Q. Would it be not a member because it imports bauxite to a limited company in the Saguenay and then would do a cut rate business in order to get cargoes for the ships on the way out? Would that be why the Atlantic Conference would not want it in?

Mr. GREEN: Where is the consumer's interest now?

Mr. HOSKING: I am just asking how it operates. I will have something more to say about the consumer's interest later on.

The WITNESS: The company does not want to become a member of the Conference, and want to be free to fix its own rates.

By Mr. Hosking:

Q. In any way it wants—to suit itself?—A. In that way it wants, to suit itself.

Q. The people of Canada have built railways across this country—in fact it was part of the agreement under which Canada formed and therefore their interests should be protected and if we are, let us suppose, moving wheat from Winnipeg, on a railway which has been built at the cost and expense to the taxpayers would it not be quite logical, as long as we protect the interests of the shipper by having two railways and two sets of ships tied in—to enable the railways to say "we will handle the wheat and give the shippers a better price and because we are interested in the welfare of Canada we want that to go on our ships across the ocean"? Is there anything wrong with that and should the company that brings bauxide in to their industry and which is not wanted as a member of the shipping Conference complain about that kind of thing?—A. I beg to differ from you on one thing in particular. When you speak of grain movements I presume you are speaking of grain hauled from Canada to Europe? The lines of the Conference which take part in the movement of grain are British lines and I do not quite follow you when you say that the railways should favour the British lines as against the Canadian lines.

Q. I mentioned wheat as an illustration. I am talking about the C.P.R. and the C.N.R. steamships which are owned by the railways and by the taxpayers of this country, and which therefore should go out to try to earn as much money as they can. Is it not right that they should use this additional service to help the taxpayer pay this bill, bearing in mind that there are always two of these companies willing to serve the shipper?

Mr. HAHN: Are there other vessels in this conference besides those of the C.P.R. and the C.N.R.

The WITNESS: Oh yes, there is a whole lot of British lines. There are about 20 others.

By Mr. Carrick:

Q. May I ask a couple of questions? The witness realizes that he has thrown into this committee a consideration here which we have only a very limited time to explore, and I am a little puzzled to know why he did not take it before the Turgeon Commission and make representations? That commission was appointed on May 20th, 1954 and I understand from Mr. Coyne that it was in 1952 that this discriminatory through bill matter first came up. If this is so would you not have had plenty of time to have prepared your brief and made submissions to the Turgeon Commission?—A. No sir. The through bills of lading privileges were cancelled effective December, 1953 at a time when Saguenay Terminals Limited had advertised that they would inaugurate a service to the United Kingdom commencing January 1st, 1954.

The time, as you can see, was well limited and we did not really suspect at that time that we would be faced with the difficulties which developed over a period of one and a half years—difficulties which we have been airing before the Board of Transport Commissioners.

Q. But that was in 1953 and it was in May 1954 that the commission was appointed. You must have had plenty of opportunity to consider the effects of what had been done and you knew about agreed charges because they had been in effect since 1938.—A. But never before had the railways resorted to such tactics and I might give you a historical explanation of that. Before the war in 1938, we had no Canadian foreign-going fleet. All shipments to the United Kingdom, or the majority of them, by Canadian exporters were made in British bottoms. Then the war came, and Canada started to build a fleet.

During the war fleets were requisitioned by the governments of each of the countries, and the rates were fixed, and there was no competition. But after the war, in 1945, there was a deficit of ship tonnage because of enemy action and there was more tonnage to be moved than there were ships to move it.

Therefore all the lines were carrying full cargoes and everybody was getting his own share. That went on for years. I think there was a bit of a slump beginning in 1950, when the tonnage which was destroyed during the war was gradually being replaced.

Then the Korean war came, and again freights went up. Everybody was getting business, and the ships were full. The pinch only started to be felt again in 1953, I would say.

Up to 1953 Saguenay terminals had no difficulty with the railways. They were getting their through Bill of Lading and there was never any discrimination practiced by way of through traffic rates or similar methods to prevent them from competing on equal terms with the other lines. It only started after that.

Q. Mr. Coyne said that your company refused to join the conference because you thought it was contrary to the Combines Investigation Act. Was any inquiry made for an investigation by the director under that Act into the activities of the conference?—A. I am sorry. Perhaps I might correct his statement. We did not take the stand that we would be violating the Combines Act in joining the conference. We said that we might be violating combines legislation if we agreed to combine together with all the other lines to fix the same rates.

Q. You mean by all the other lines, with those in the conference?—A. With those in the conference.

Q. Did you ever ask for an investigation into the activities of that organization in so far as they fixed rates?—A. It is a debatable question, but I would say that possibly the conference lines might not be breaching the combines legislation in fixing their rates so long as they did not try to get those outside the conference to charge the same rates. If you leave a group fixing rates on the one hand, i.e., the conference, and independents outside the conference with full liberty to quote whatever rates they wished, possibly the conference is not in breach of combines legislation because there is competition between independents and the conference. But if the railways, as they attempted, had brought us to charge the same rates as the conference, then there would have been no more competition. All would charge the same rates, conference and independents alike. That is what we did not want. We said that if we join the conference, then there will be no competition and we may be breaching the combines legislation. We do not want to do that. We want to remain independent and compete with the conference on the basis of the rates which we set. We want full liberty and freedom of fixing the rates that we want.

Q. In so far as Saguenay Terminals are concerned, does it not boil down to this; that you did not want to join the conference because you figured you could carry freight cheaper than the members of the conference, or that you were in an economic battle with the members of the conference and the railways?—A. That is true.

Q. What you are complaining about then is the consequences of being in that struggle?—A. No. We are in competition with the conference now. It is competition in the true sense; but what we object to is that the railways should try to stifle competition between us two. We see no reason why the railways should come into the picture and say: "We do not want competition between ocean transportation lines."

That is none of the business of the railways. They do not suffer anything. That does not affect their rates over the land movements. They can get just as much for a movement from Winnipeg to Halifax with competition existing in the ocean transportation field. That does not affect them at all as railways.

Q. If you joined the conference you would be in exactly the same position as the other steamship companies in the conference?—A. We would. We would have to charge the same rates. Shippers would have no opportunity of choosing lines outside the conference and they would therefore have to accept the rates which the conference set. The conference having complete control could set whatever rates it wanted. They could double their rates between today and tomorrow and the shippers would have no recourse.

By Mr. Hosking:

Q. Are not the railways in the reverse position to you? Your company has all the loads that it requires in bringing bauxite into the country, while on the outgoing journeys you are looking for trade, and anything you can get is free and gratis. The railway lines are in the reverse position. They are in a position to send out all their ships loaded under this legislation, which is the reverse of yours. Your ships come in loaded with your own business, while when going out they grab at anyting at any price, in order to get something. They are in a position where their outgoing trips would be loaded, but when coming back they have to grab at any port. Isn't that a good thing for the country? You have every cargo coming in loaded with bauxite, and you are willing to ship anything on the way out.—A. I do not follow your argument. If Canadian shippers can get a cheaper ocean transportation rate from Saguenay Terminals Limited, why should they not get it? Let me illustrate this by saying a word or two about the Canadian National Steamship Service to the West Indies. The Canadian National Services are in competition with other services and other foreign lines, apart from Saguenay Terminals Limited. Alcoa is one of them, and there are others.

Canadian National Railways have agreed to charge the same rate to Canadian shippers as all the other conference companies are charging them. Why should that be? Why should not Canadian National Steamships not compete as we, the Saguenay Terminals Limited, are competing with foreign lines? And they might possibly get more cargo if they offered lower rates than the conference lines.

By Mr. Cameron (Nanaimo):

Q. Do you carry inbound cargoes other than bauxite?—A. The company is bringing inbound cargoes from British Guiana, mostly bauxite. There are also other cargoes. I am not in a position to give you the percentage, but I could ask.

The CHAIRMAN: Mr. Nicholson.

Mr. CAMERON (*Nanaimo*): You ment on, Mr. Brisset, that your company wished to engage in the trade of carrying products from Canada to the United Kingdom. Do you at the same time wish to engage in carrying products from the United Kingdom to Canada?

The WITNESS: No sir, you see the—

The CHAIRMAN: Just say "yes" or "no", Mr. Brisset.

Mr. GREEN: Mr. Chairman, I object. The chairman of this committee has no right to take a stand like this, nor to tell a witness to say "yes" or "no".

The CHAIRMAN: He can say "yes" or "no".

Mr. GREEN: This witness has been questioned by various members of the committee and I hope to ask him some questions myself.

The CHAIRMAN: Mr. Nicholson was trying to ask a question on several occasions and other members were taking his place.

Mr. GREEN: The witness has been very patient and he has tried to answer these questions. I do not think it is fair for you to interrupt and say, "Now, you answer 'yes' or 'no' ".

The CHAIRMAN: You just want to talk, so go ahead.

Mr. GREEN: After all, we are here as a committee functioning in a judicial way and we cannot make progress if we are going to have interruptions of that kind from the chair.

The CHAIRMAN: I do not interrupt very much.

Mr. GREEN: Yes, I know, but you interrupted at the wrong time.

The WITNESS: Shall I answer the question?

Mr. NICHOLSON: Mr. Chairman, I should like to ask Mr. Brisset a few questions. I wonder if the Canadian National Railways operates any ships between the east coast and the United Kingdom or are all their ships operating in the West Indies service?

Hon. Mr. MARLER: They are operating in the West Indies service, Mr. Nicholson.

By Mr. Nicholson:

Q. That is the point I was trying to establish, that the C.N. have not for some years been operating to Europe. I could see that an argument could be made whereby the C.N. would give a special rate via rail and boat and ship to the West Indies, but it is difficult for me to understand why the C.N. railways in quoting a rate from Saskatoon to Liverpool should insist that a cargo of flour, for example, must be carried by a particular steamship across the Atlantic if the C.N. is not giving that service. Likewise, the C.P. might, I think, quote a special rate provided they were prepared to carry the goods from the point of origin to Liverpool or Southampton, but it is difficult for me to understand why the C.N. Railways are refusing to accept cargo at western points for delivery in the United Kingdom unless the whole voyage be carried on by transportation selected by the C.N. Railways. Are there specific cases where the C.N. have refused to carry cargo from western Canada on ships operated by your company?—A. The question was, are there instances where the C.N. Railways have refused to carry cargo—

Q. To give the minimum rate from Saskatoon to Liverpool, for example, unless the ocean carriage was on one of the Conference boats rather than on one of the non-Conference boats?—A. Oh yes, the C.N. have worked hand in hand with the C.P.R. all through.

Q. What about the C.P.R.; have they given permission for cargo to be carried on rail and carriage across the Atlantic on ships other than C.P. ships?—A. You mean on ships other than Conference?

Q. No, other ships belonging to the Conference but not belonging to the C.P. steamships.—A. Oh no, what the railways insist on is that the cargo be carried on Conference lines as distinct from independent lines, and Conference lines include C.P. steamships and many other British lines.

Q. What I am trying to get at is have we cargo originating in Canada carried across the Atlantic on Conference ships other than C.P.R. ships? I could understand why they could give a special rate if the cargo was going all the way by C.P. carrier rail and boat. As I understand it they are giving the reduced rate to cargo going on ships other than their own?—A. Absolutely, but not to Saguenay Terminals Limited.

Q. I wonder if you have appealed to the Minister of Justice asking that an investigation be conducted under the Combines Investigation Act. If what you say is correct, it would appear to me that this practice which you describe is definitely a restraint of trade and there should be an investigation by the Department of Justice. Have you appealed to the Department of Justice?—A. No sir. We have appealed to the Board of Transport Commissioners and have had redress there. The Board of Transport Commissioners have told the railways they have not the right to do that but we are afraid that we will not be able to do it if it is done under the guise of an agreed charge because then there is no direct appeal and there is no way of going to the Board of Transport Commissioners for the non-regulated carriers. That is the purpose of the amendment I submitted this morning, that we should preserve to the non-regulated carriers the right to go to the Board of Transport Commissioners as they have in the past when confronted with these practices.

Mr. HAHN: Could you not go to the courts in that case and prove that it is a restraint of trade?

The WITNESS: I am afraid that is a difficult question to answer, and I would not like to commit myself without making a thorough study of the combines legislation with which I am not too familiar.

Mr. NICHOLSON: The last paragraph in this report issued at Ottawa on April 28, 1955, reads: "Order will issue declaring that the Canadian Pacific Railway Company, the Canadian National Railway Company and other members of the Railway Association of Canada have failed to do what they were required to do by order number 84457". It is your opinion that if this bill is passed as it now stands there will not be any chance of redress and you would have no way to compel the Canadian National Railways to comply with this order?

The WITNESS: No, the railways will get around the order of the board by resorting to agreed charges in the manner I explained to you this morning.

The CHAIRMAN: Any other questions?

By Mr. Green:

Q. Mr. Brisset, under the present agreed charges law would it be possible for the railway to make an agreed charge which in effect covered not only the rate on the railway, but also the cost of shipping the goods by sea?—A. The question, if I understood it properly, is could the railways under the present Act make agreed charges covering both land movement and ocean movement, is that correct?

Mr. MURPHY (*Lambton West*): Both land and water.

Mr. GREEN: Yes.

The WITNESS: I do not think they could. I do not know that they have. They have always resorted to the through rate tariff mechanism. There is no mention in the agreed charge provision in the present Act of combined movement by land and ocean outside of the protected waters under the Transport Act.

By Mr. Green:

Q. Can they put in a restriction such as the one you mentioned to the effect that the goods must go by a certain ship?—A. That is what we are afraid of. They may not necessarily say by a certain ship but they will say by a certain line or by the Conference Lines.

Q. Suppose under the present law the railways did make an agreed charge which contained a provision that this freight had to go by one of the Conference ships, under what authority can you at the present time attack that agreed charge?—A. The agreed charge first of all, I must say, would have to be approved by the Board of Transport Commissioners.

Q. That is right—A. I think the Board of Transport Commissioners "proprio motu", looking at this type of agreed charge, could say, "Oh no, you have not the right to make such an agreed charge."

Q. I see. Then your fear is that under the new law—that is when this bill becomes law—the agreed charge with a proviso in it of that kind could go into effect and there would be no way of attacking it. Is that the essence of your complaint?—A. That is the essence of our complaint.

Q. And you are asking that a provision be made that you can have the right to attack an agreed charge which has a proviso of that kind?—A. Yes, and we say that the proper place to do it is in section 32 and that we should get away from the mechanism of section 33 because it would be so patent that the charge is illegal that there would be no reason first of all to go to the minister after waiting three months and then go to the board because the minister—and I perhaps am presuming in saying so—would have no other alternative than to grant the permission to go to the Board. His function will then only be a perfunctory one. I do not see that he would have any alternative but to grant the request. That is if it could be made, but it cannot be made by the carrier under section 33 as it now reads.

Q. I am very much interested in the possibility of a plan of this kind being used to stop shipping between the east coast and west coast. In what way do you think the railways could use the new agreed charge provisions to interfere with that intercoastal shipping?—A. They could do it by making it an agreed charge or agreed charges that would not be compensatory. And that would be simply for the purpose of putting the line out of business, the railways sustaining a loss during the period that would elapse between the coming into force of the agreed charges and the folding up of the intercoastal shipping service.

Q. Could you give us more details of that Clark Steamship Line and what happened to it. Was it the Clark Steamship Line?—A. No. Monsen-Clark Limited was the name of the firm that inaugurated the first intercoastal service after the war in 1950. That service I believe lasted for a year.

Q. Do you know the respective rates that were in effect in connection with the running of that line out of business?—A. I am afraid I am not briefed to answer the question and give statistics. I cannot do it. I can only speak of the incident in a general manner.

Q. Are there any officials here who could give you that information? —A. Could Mr. Baatz, who is treasurer of the Saguenay Terminals Limited, answer the question?

The CHAIRMAN: Yes.

Mr. WILLIAM BAATZ (*Treasurer, Saguenay Terminals Limited*): I am not sure whether we can say exactly the manner in which the Monsen-Clarke service folded up. The mechanism I would say is that I believe that agreed charges were introduced which could have had the effect of taking the business from Monsen-Clarke. The revenues Monsen-Clarke could get were just too

low to allow them to continue. After they folded up I would say it was the automatic operation of the agreed charge that brought the rates back to their normal level. When the agreed charge ran out there would be no reason to renew it.

Hon. Mr. MARLER: Are you talking about agreed charges or competitive rates?

Mr. BAATZ: Agreed charges I understand.

Mr. GREEN: That was done by agreed charges?

Mr. BAATZ: I believe that is right, in a number of commodities. I could not guarantee you that that was a uniform pattern. I would say it was a pattern prevailing for a sufficient period to so influence the business that it could have had a decisive effect.

Hon. Mr. MARLER: What year was that?

Mr. BAATZ: 1949.

The WITNESS: 1949-50.

Mr. BAATZ: Yes.

By Mr. Green:

Q. Is your company operating the service now between the two Canadian coasts?—A. Between the east and west coasts and also export cargoes to American ports on the west and east coasts.

Q. Could there be any arrangement in connection with this intercoastal trade similar to the arrangement to which you have referred which brings about the rate which includes the railway rate and the rate of shipping Conference? I take it that the Canadian-United Kingdom Eastbound Shipping Conference only covers business to Europe. Could the same plan be followed by the railways with respect to shipping through the Panama Canal from one coast to the other?—A. The way the railways have met the competition of the intercoastal service in the case of Monsen-Clarke was by negotiating agreed charges with the shippers for a land movement exclusively. For instance, from Vancouver to Halifax by rail. Now there is one manner in which, through agreed charges, the intercoastal service could be affected. I believe that the railways could go to a shipper in British Columbia that ships goods from British Columbia to say Halifax, and also ships goods from British Columbia to Manitoba, and say to the shipper, "We will give you an agreed rate on your movement of goods from British Columbia to Manitoba, a very beneficial rate, provided you cease shipping goods in the intercoastal service from Vancouver to Halifax. I would see nothing in the present legislation which would prevent the railways resorting to a tactic of this kind.

Q. They would give him the lower rate on the goods—A. That he has to ship by rail anyway.

Q. —provided he will agree to ship his other goods by rail rather than by Panama Canal?—A. Yes.

Q. That would be a term of the agreed charge?—A. Yes. It could be a combined agreement covering both traffics.

Q. Is it possible to make a term of the agreed charge a proviso that the freight must be carried by a member of the Conference?—A. You mean in so far as ocean shipment is concerned?

Q. Yes.—A. Yes, that is what we fear—that the railways will approach a shipper and say "we will give you such and such a rate for the land movement to the port of embarkation of the foreign-going ship provided you ship only via Conference lines."

Q. That, in effect, would be an agreed charge "with a tail"?—A. It would be an agreed charge made to the detriment of an unregulated carrier and very

likely also to the detriment of the shipper in the end because the combined cost of rail and ocean charges via Conference might be greater than the combined cost if the railways were willing to give the same concession in case of ocean shipments via Saguenay Terminals.

Q. In the case of Newfoundland—in going to Newfoundland—ships are not under the Transport Act? Is that right?—A. They are not under the Transport Act.

Q. They are in the same position as though they were going to the United Kingdom?—A. Exactly.

Q. The Board of Transport Commissioners have no control whatever over shipping rates?—A. That is correct.

The CHAIRMAN: Are there any further questions?

Mr. O'DONNELL: May I ask a question of the witness?

The CHAIRMAN: No, I don't think so.

By Mr. Murphy (Lambton West):

Q. I would like to ask the witness a question while he is still on his feet. What puzzles me ever since this started is this: if this bill becomes effective it would seem that the Transport Board would become less effective with respect to agreed charges. That is what you are alarmed about is it not?—A. Yes.

Q. Is that not the essence of what you are presenting to this committee?—A. Exactly.

Q. And for that reason you have drafted an amendment which would enable complainants like yourselves and others to approach the board when there is a complaint such as you have illustrated in your evidence today?—A. Yes sir, but the amendment I suggest is restrictive in the sense that it will only permit the non-regulated water carrier to apply to the board when he is affected detrimentally by an agreed charge which the railways in any event should not make, with a view of causing harm to the business of this unregulated carrier because the railways should have no right to interfere in the competition that must exist for the benefit of this country in ocean transportation rates.

Q. Do I understand, Mr. Brisset, that regardless of the rates which are set by the transport board that a transportation company such as a railway company can make a private agreement with the shipper provided he does his complete shipping?—A. They may make it a condition of the agreed charge that he will make his complete shipping via such and such an ocean line rather than through an independent line.

Q. That is what alarms you. And the same can be said of the same compensatory rates—is that a fact? The transport board really steps out of the picture if this comes into effect?—A. Exactly.

Mr. GREEN: The position under the new Act would be then that if the railways set out to put out of business let us say a shipping line between the east coast and the west coast that shipping company, whether it is yours or any other, has no right to appear before the Board of Transport Commissioners or do anything at all.

Hon. Mr. MARLER: It has not got any right either, has it?

The WITNESS: No. If the rate quoted by the railway is a competitive rate the ocean transportation line has no redress. Competition is of the essence.

Mr. GREEN: If it is an agreed charge under the present law and is not compensatory then the Board of Transport Commissioners can prohibit it, can they not, under the present Act?

Hon. Mr. MARLER: It must be compensatory under the present Act.

The WITNESS: It must be, the board having the duty of first approving the charge before it goes into effect must, I think, go into the question whether it is, first of all, a compensatory rate or charge.

Mr. GREEN: Now, under that law, that protection goes out of the window?

The WITNESS: It goes overboard.

Hon. Mr. MARLER: I do not think it is fair to say it goes out of the window, but it is limited, certainly, Mr. Chairman.

By Mr. Carrick:

Q. Mr. Brisset, you have made a serious allegation against Canadian National Railways that they have sought by agreed charges to put the Monsen-Clarke line out of business. Is that what you are saying to the committee?—A. We are saying that the railways have negotiated agreed charges the effect of which was to put the Monsen-Clarke line out of service on that particular route.

Q. Have you any evidence of that? Do you know anything about the financial structure of the Monsen-Clarke line?—A. No. I could not answer that question.

Q. Do you know anything about the proportion of business they did on the coastal trade as distinct from any other type of business? Was the coastal trade 100 per cent of their business?—A. I am not myself able to answer that question. I am informed that they were calling at intermediate ports on the way as part of their service.

Mr. Murphy (Lambton West):

Q. I am glad you asked that question Mr. Carrick, because I intended to touch on that point but I had forgotten about it. I think it is important, Mr. Chairman, that we should have a very brief review of what took place with respect to that particular case. As I recall it there was competition and because of the rates—you put it in your own words, Mr. Brisset. What happened to this Monsen-Clarke Company?—A. They folded up.

Q. They folded up?—A. I am sorry that I am not briefed on this particular matter. I did not expect questions on it.

Q. Was the company a large operator?—A. No, I do not think they were.

Q. Since they folded up have the rates changed? That is, prior to your coming into the picture?—A. The rates, I understand, went up as soon as the agreed charges expired.

Q. Can you put on the record what the increase was?—A. No, we are not able to give you this information because we have never had access to the records of this company. We know in a general way what happened to it, but we can only speak about it in generalities.

Q. When did your company come into the picture with respect to this inter-coastal shipping?—A. In 1951 or 1952. It was in July, 1951.

Q. You are still in competition?—A. We are still in competition, yes.

Q. How do your rates compare with the opposition?—A. I am afraid that I am not competent to speak on rates.

Q. I do not mean in exact detail. Are they much higher or lower than they were when the other line went out of business?—A. You mean a comparison of our present rates with the rates of the Monsen-Clarke Company when that line was operated.

Q. That is right.

Mr. W. D. FLAVELLE (*General Traffic Manager of Saguenay Terminals Limited*): The rates now are about the same as we were quoting then, or somewhere around that.

Mr. McIvor: Mr. Chairman, I am not a lawyer or an expert, but I was just wondering.

Mr. Green: You are a bit of a sea lawyer.

Mr. McIvor: I was just wondering how much ocean freight is carried by the Canadian National and the Canadian Pacific. If I were the Canadian Pacific or the Canadian National and I carried goods to the coast, I think I would like to carry it all the way if I could do it honestly. But other shipping companies should have their rights to compete for freight that is not carried by the railroads. I may be wrong, but that is the way I see it now. If a lot of the freight is carried otherwise than by the railroads, then the shipping companies should have the right to compete.

Mr. Hahn: A few moments ago the minister said that the agreed charge as it exists under the present Act must be compensatory. In that case there was quite a bit of legal competition between the Monsen-Clarke Line and the Canadian National Railways; and as I understand the objection to the agreed charge, it is that there should be no complaint on that basis. It was not a case of carrying traffic across the ocean. It is something quite different. I do not believe that the witness has indicated to my satisfaction at least that there was anything wrong in that particular instance.

Mr. Green: They used the agreed charge to put the line out of business.

Hon. Mr. Marler: They are still carrying their goods at a compensatory rate.

Mr. Hahn: There was no charge that the rate was not compensatory. That is the factor that we should be considering at this time, as to whether or not it was compensatory. If it was not compensatory, then certainly the charge would be well founded; otherwise I do not think we have any complaint in that respect.

Hon. Mr. Marler: I would not think so.

Mr. James: I seem to recall a point previously mentioned, that one of the lines put other people out of business. Is this not one of the lines which did as much as anything to put the Canadian National Steamship Lines almost out of business with respect to the British West Indies? Is that correct?

Hon. Mr. Marler: I think we can excuse Mr. Brisset from answering that question.

By Mr. James:

Q. I think it is a fact from the evidence that we have received earlier today, because of their non-compensatory rates that they charge in connection with material going to the British West Indies, while they come from there carrying bauxite. I think in some ways you can hardly blame the Canadian National Railways, the Canadian National Steamships, and the Canadian Pacific Railway for taking whatever action they find necessary to meet certain types of competition. It may be that with a contract to carry at an agreed charge the total output of produce of a company across the ocean to the United Kingdom you would probably expect them to give a special rate. They have a peculiar position with empty bottoms going back, because they would be getting all the business, or a good proportion of it.—A. I am not an expert in rate-making. I think the question should be answered by somebody who knows the business.

Q. They would have a reasonable assumption that they would be getting from 75 to 100 per cent of their business from here to the United Kingdom and that you would give them a lower rate than if you were only getting a proportion of it.—A. I consider that as a possibility; the law of supply and demand

would operate in fixing our rates and in that respect we differ from the conference lines, where the conference lines exact from the shipper that he ship all his goods on their vessels at rates which they fix and maitnain.

Q. Under the agreed charge rate that we have here, the Canadian National and the Canadian Pacific rates would not necessarily be fixed; they could be lower than the rate they represent to the public.—A. No. The Canadian Pacific Steamship company is a member of the conference. The Canadian Steamships having come to an agreement on the West Indies trade with the other conference lines, could not offer to the shipper, by the terms of that conference organization, any better terms than all the other lines are offering.

Q. Offering to the other shippers?—A. Offering to the other shippers. The purpose of the carriers being members of the organization is that they must charge the same rates to all the shippers. That is the way they maintain their rates, because of the pressure they are able to exercise and the fact that they are all bound together by the conference agreement.

Q. Getting back to the other idea I was working on, because of your special conditions, and because of the possibility of getting one hundred per cent of the trade, I think we can assume that you would give them an exceptionally low rate because of this special condition. Here we find that you are complaining because the Canadian National and the Canadian Pacific might possibly, or hypothetically, give a special rate because of their peculiar conditions with regard to rail transportation. But you have said there is no possibility of them giving a special rate in so far as their ocean going ships are concerned. Is that not almost a reverse position?—A. No. We may recognize the right of the conference lines to compete with us and to quote lower rates than we do, if they want to; but when we offer let us say a rate of $10 a ton on a commodity, and a foreign line offers a rate for the same commodity of $12 a ton, we challenge the right of the railways to say to the Canadian shipper: "You will ship at $12 a ton instead of $10 a ton, and if you do not ship at $12, we will not give you the several benefits such as the through bill of lading benefit, the through rate tariffs participation, or the agreed charge benefits." I am speaking of the shipper.

Mr. BYRNE: A shipper can determine that he will obtain a better deal by entering into the agreed charge. He must be aware that there are independent shippers who will take his produce from the seaboard to its destination. He will appraise that with the regular charge and he will still find by accepting the agreed charge he has saved a considerable amount. Is there anything unusual about that?

The WITNESS: He should still be free to choose the ocean carrier which gives him the best rate.

Mr. CARTER: Surely it is the overall rate he is concerned with—the total he has to pay. If the overall rate is better than that obtained by adding up two or three supplementary rates, surely that is what counts, and that is what the shipper is concerned with—getting the cheapest rate from the time goods are shipped to the point of delivery.

The WITNESS: That is the very point—he is not getting the cheapest rate. If they give him a rate of $8 if he ships by Conference and not by Saguenay —and if the railways, as railways, are prepared to carry this commodity at $8 a ton to seaboard—if he ships via Conference lines there is no reason why they should not carry it at $8 a ton also, if he wants to ship by Saguenay,—

Mr. CARTER: Where do you get the figure $8 a ton?

The WITNESS: I have used many figures today.

The CHAIRMAN: It is a hypothetical case.

The WITNESS: Yes, it is a hypothetical case.

Mr. CAVERS: It is all hypothetical.

The WITNESS: Yes, I am not giving you statistics here. If the member does not like my figure of $8 I can change it.

Mr. GREEN: Perhaps the minister could clear up that point at this time. Is it possible to have an agreed charge with a proviso in it that when the goods get to the seaboard they must be shipped by a certain line. Is it possible to negotiate an agreed charge of that kind?

Hon. Mr. MARLER: Personally, Mr. Chairman, I do not see that that seems to be contemplated in the Act, and my only inclination is to think that the purpose of the agreed charge is the transport of goods in Canada. I may be wrong, but that certainly would be my own first hand impression. In any event, I cannot help thinking it is perfectly clear what Mr. Coyne and Mr. Brisset wish. They wish to make certain that agreed charges will not contain clauses that discriminate against non-Conference lines and I think they have made perfectly clear to us the means by which they think they should be given protection. I cannot help thinking myself that we have been beating over the same ground practically without interruption since about 12 o'clock today.

Mr. HAMILTON (*Notre Dame de Grace*): Mr. Chairman, I might ask this question following along the lines of the minister's observation. It is his intent in the bill that these agreed charges would restrict transportation of goods in Canada. Could we not achieve that end more definitely and deal with this particular situation which seems to discomfort certain lines by inserting two words in section 32, paragraph 1, following the words "shipper". We could insert the two words "in Canada" so that a carrier under the Act would then read: "—a carrier may make such charges for the transportation of goods of a shipper in Canada as are agreed between the carrier and the shipper." That would immediately remove any possibility of the situation arising which has been pointed out to us might arise.

Hon. Mr. MARLER: Mr. Chairman, I would like to say that it is a point to which consideration will be given and I am not prepared to make a definite statement on that point at the moment. I would like to wait until I hear all the evidence given before the committee before I formulate any suggestion to the committee as to how it should be done.

Mr. HANSELL: I agree with the minister in his previous statement and I think the matter has been pretty well covered. I do not think, however, that the statements made by Mr. Coyne and Mr. Brisset perhaps go quite as far as the minister indicated. While, of course, they do not agree that any agreed charges contracts should involve trans-ocean shipments at the same time their proposed amendment—

Mr. NICHOLSON: Mr. Chairman, I wonder if we could have one speaker at a time. It is difficult to hear when four or five members are speaking. Could we have a little order in the committee.

Mr. CARRICK: Mr. Hansell has the floor.

The CHAIRMAN: Order, gentlemen. Please proceed, Mr. Hansell.

Mr. HANSELL: —the proposed amendment simply asks that these shipping companies have a right to appeal to the transport board if they think there is discrimination and then it is left to the transport board who may—it does not say "shall"—disallow the agreed charge. I think it goes that far.

The WITNESS: Yes, we are perfectly happy to submit our case and make our case before the board. We have had redress in the past before the board and we are quite satisfied to go back to the board if we have to complain about similar practices as the ones we have complained of in the past.

Mr. CAVERS: Could we hear from Mr. MacTavish now, please?

The CHAIRMAN: Thank you very much, Mr. Brisset.

Mr. D. K. MacTavish, Q.C., representing Canada Steamship Lines, called:

The WITNESS: Mr. Chairman, Mr. Minister and honourable gentlemen, I hope I can make my remarks very brief and they are these: on behalf of Canada Steamship Lines we would ask the committee when it comes to consider subsection 5 of section 32 to give consideration to an amendment which in our view will bring that section in exact accord with the recommendation of the royal commission. This, Mr. Chairman, and gentlemen, is not a quibble about words, and I am just going to talk about two words—but it has a substantial importance from my client's point of view having regard to the fact that the section in our submission as it appears in the report is designed to carry out and implement an agreement reached between Canada Steamship Lines and the railways at the time this matter came before the royal commission presided over by Chief Justice Turgeon.

Mr. HOSKING: Would it be possible to proceed with the bill and come to the proper clause with which this deals before Mr. MacTavish makes a point of this?

Mr. CAVERS: I think we should hear the representation first.

Mr. CHAIRMAN: Yes, I think we should hear the witness.

The WITNESS: I hope I can make it so brief that it will be apparent before it comes before you in the form of a section.

Mr. CAMERON (*Nanaimo*): Could we have the witness identify whom he is speaking for?

Mr. CAVERS: It was announced earlier that Mr. MacTavish is here representing Canada Steamship Lines.

Mr. CAMERON (*Nanaimo*): I am sorry, I did not hear that.

The WITNESS: The portion of the Act in which we are interested is the first line and it reads:

> Where an agreement for an agreed charge has been made by a carrier by land, by water, etc.

The words to which we take exception there are the words "has been" and our request is that the committee give consideration to inserting the word "is" instead of the words "has been" and by doing that it will accord exactly with the wording in appendix "A" to the royal commission report which suggests this subsection.

If I may, Mr. Chairman, I would like to refer you back to page 36 of the report where the commissioner indicates what lead up to the wording in this section. Here again, for purposes of brevity, I will only read the last two sentences of the paragraph marked three on page 36. Chief Justice Turgeon had referred to a previous contention by the Canada Steamship Lines and the railway about this type of thing and then went on to say: "the company"—in this case the Canada Steamship Lines—"protested to the Royal Commission on Transportation that the unrestricted use of the agreed charge by the railways would force water carriers to the wall. This opposition has now been withdrawn and it has been agreed between the company and the railways that provision is to be made to allow water carriers to become parties to any agreed charge upon certain conditions. I think this arrangement should be made part of agreed charge legislation and I will set it out in full further on." May I read the first line which conforms generally with the first line in the Act? This is subsection 4 of the report:

> Where an agreement for an agreed charge is made by one or more carriers by rail and by water, etc.

There is another minor variation from the appendix in the section that is before this honourable committee and that which is in the suggested section in the report. The report goes on to say that in this case Canada Steamship Lines should participate in such agreed charges. We think those words might well be added in the middle of line 10 in the section for further clarification, but I do not press that as strenuously as I press the desirability of inserting the word "is" instead of the words "has been".

Now, if I may just add one word to indicate the nature of the agreement to which I refer, this matter, as I say, came up at the hearing and Mr. Hazen Hansard, counsel for Canada Steamship Lines, was asked by the commissioner in respect of this matter we are discussing here now the following question?

> This is something you all agree upon?

Mr. Hansard replied in a paragraph all of which I will not read:

> I think also the statement of Mr. O'Donnell that the rails had no opposition to our being given an opportunity to participate in these agreed charges where we were competing.

That is carried further in the transcript of the Royal Commission on Agreed Charges at page 112 where Mr. Hansard said in answer to a question from the commissioner:

> Yes, I think I am correct in saying that that would go by the board and if there is no veto provision that violates the water lines even though they compete they have no opportunity to be heard and are faced with a fait accompli when they discover an agreed charge has been made which takes away a substantial block of traffic and there is nothing they can do about it.

I suggest, Mr. Chairman, that obviously the agreement to which the commissioner referred is an agreement made by counsel, Mr. Hansard for Canada Steamship Lines and Mr. O'Brien and Mr. O'Donnell for the railways concerned, that Canada Steamship Lines should have that opportunity of consultation before an agreed charge is made. If the ordinary connotation is given to the words "has been" then the agreement as Mr. Hansard says in the words I have just quoted, has become a fait accompli—

Hon. Mr. MARLER: There is no intention on the part of the government in using the words "has been" to give a different significance than the word "is" and we would be perfectly prepared to accept an amendment to change the words "has been" to "is" to satisfy the point Mr. MacTavish just raised.

By Mr. Cavers:

Q. In line ten of subsection 5 it is your suggestion that after the word "charge", that is water carrier, a carrier by land, is entitled to become a party and to participate in. Are those the words you suggest?—A. Yes.

Q. And to establish tariffs?—A. Yes. I suggest that as a matter of integrity having regard to those words being used in appendix "A" the context has been changed a little bit but no change in the meaning. My suggestion would be if the words "and to participate in such agreed charge" were added in the middle of the line after the word "charge" then I would think that the section exactly reflected appendix "A" and as I understand from what was said earlier this morning both railways are prepared to stand on the report. I believe that would make for clarity.

By Mr. Green:

Q. When the minister interjected, you were just starting to say something about the steamship company wanting to be in a position to sit in on the negotiation of an agreed charge. Could you explain that further?—A. I think the steamship company, sir, is entitled to be protected against being faced with a fait accompli before they can do anything about becoming participants.

Mr. CARRICK: Your company is legally a carrier which comes under the Act anyway?

The WITNESS: Yes.

By Mr. Green:

Q. As I understand it the other participants in the agreed charge are under certain circumstances parties who have not been in the negotiations at all but who have the right to take advantage of the agreement which is finally signed. When I read this clause 5 I thought that was the right you were being given, that after an agreed charge is made under certain circumstances such as you outlined in clause 5 you would become a party to the agreement but you say that you want to be able to sit in on the negotiations of the agreed charge which is a different thing. Just what do you have in mind?—A. I am satisfied, Mr. Green, that the section as set out in the appendix is designed to implement the agreement to which I have referred which was raised by counsel at the hearing. I think it is best explained by Mr. Hansard when he says they are faced with a fait accompli when they discover an agreed charge has been made. It was the inclusion of the words "has been" in their connotation of the past tense which gravely concerned Canada Steamship Lines when the draft bill came in.

Q. But even if you substitute the word "is" for the words "has been" would that give you the right to sit in on the negotiations before agreement is reached?

Mr. HAHN: Would it not require the words "should participate in"?

The WITNESS: For further clarity—this connotation is there in the light of what was said earlier by Mr. Justice Turgeon. It would seem to mean "is being made". It seems that that is the connotation of the word.

By Mr. Green:

Q. Do the railway companies agree with your submission?—A. I do not presume to speak for the railway companies. I understand from my conversation with my learned friends that they are satisfied, and I think they have said publicly here, with the text as it appears in Appendix A, but they can speak for themselves.

Mr. O'BRIEN: We agree with the draft submission. There are two or three words in it on which Mr. MacTavish did not comment in the draft of the bill which mentioned that it should be on the basis of established differentials. When you are making an agreed charge you mean them to agree on a differential for that rate and that rate at the time. We are all in agreement that the text prepared by the Royal Commission is satisfactory.

Hon. Mr. MARLER: I think I would like to look at the two clauses and see what the differences appear to be. I think our intention is to implement the report and not to change the recommendations.

The CHAIRMAN: Thank you Mr. MacTavish. Mr. Sheppard, I understand, is representing the province of Manitoba.

Mr. C. D. Sheppard, Q.C., Counsel for the Manitoba Government, called.

The WITNESS: Mr. Chairman, Mr. Minister and Hon. Members, I have with me Mr. Stechishin of the Manitoba Transportation Commission. This is a fact finding body jointly sponsored by the Government of Manitoba, the city of Winnipeg Chamber of Commerce and the Manitoba Federation of Agriculture in cooperation. I would like to say that the Government of Manitoba appreciates the opportunity of being heard, Mr. Chairman, and I will undertake that my representations on behalf of the government will be brief.

I do not believe that any committee of the House of Commons needs to be told that the West is very transportation conscious, as are the Maritimes, and it is only natural that we should be. We are dependent on rail transportation and we like to think that they are dependent on us. We are equally anxious to see a healthy trucking industry. We want the benefit of carrier competition, in other words.

I think my next comment would be to express agreement in principle on behalf of the Manitoba Government with Bill 449. It may be of interest to the committee to note that the Manitoba Government was represented throughout the hearings of the Turgeon Royal Commission on Agreed Charges. We made representations to that commission, some of which were implemented and some of which were not. We are not here today to re-argue our case. We have an extremely high regard for the Royal Commissioner and we are prepared to accept his report as a proper one after a very full and complete investigation.

There are however, Mr. Chairman, two points to which I have been instructed to invite the attention of this committee. The first I can deal with very briefly because it has been dealt with exhaustively by both the railways and the truckers. It has to do with whether or not the trucking industry should have a right to complain, and if so what right, under section 33. I think it may be of interest to the committee to note that Manitoba and British Columbia drafted at the request of Mr. Justice Turgeon a joint suggested amendment to section 32 of the Transport Act, and also a suggested amendment to section 33. I may say that the right of truckers to be heard was very fully debated. I myself spent quite an uncomfortable half an hour trying to justify the amendment to the Royal Commissioner. I would only add that I feel the amendment suggested by the Trucking Association may be broader than is called for, but I feel that since the railways have in my own province the right to speak—as my friend Mr. O'Donnell mentioned yesterday—before the local motor Carrier Board, on the question, it is true, not of rates but on the question of public convenience and necessity—that it does seem a little unfair for the trucking industry to be denied any voice in this matter. I do not believe I need go further in regard to commenting on section 33.

My only other comment, Mr. Chairman, and gentlemen, has to do with the wording of subsection 1 of section 32 and I would like if I may to read the words:

> Nothwithstanding anything in the Railway Act or in this Act a carrier may make such charges for the transport of goods of a shipper as are agreed between the carrier and the shipper.

And I would invite the attention of the committee to the opening phrase "notwithstanding anything in the Railway Act." My understanding, Mr. Chairman is that one of the main reasons for enacting the first Railway Act in 1904 was to ensure that there would be no unjust discrimination or undue preference given. I would refer briefly to section 319 of the Railway Act, which states in part:

> (3) No company shall
>
> (*a*) make or give any undue or unreasonable preference or advantage to, or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever.

And section (c) states:

> (c) subject any particular person, or company, or any particular description of traffic, to any undue, or unreasonable prejudice or disadvantage, in any respect whatsoever.

I am not suggesting Mr. Chairman that this section 32 of the Transport Act must necessarily be made subject to section 319 (c) of the Railway Act but I would simply draw to the attention of the committee the fact that the phrase "notwithstanding anything in the Railway Act" precludes the normal protection that the shipper has from operating in the manner now open to him under the Railway Act by section 319 (c).

Looking now at the second line of subsection 1 of clause 32 it now reads:

> . . . a carrier may make such charges . . .

It is a wide open privilege being granted to the railways and as I stated we are not opposed to the extension of the freedom of the railways. It is true that this wording is the same as the present clause 32(1) but if Hon. Members of the committee would look at the present section 32(2) which is on the opposite page they will see that it requires the approval of the board, and the board will not approve of it until it feels that it could not be secured by means of a special or competitive tariff.

The point I wish to make, and then I will be through, is that the wording of section 32(1) in the proposed bill, and the wording of sub-section 2 in the old Act leaves it open to the carriers to negotiate an agreed charge in instances where competition does not exist at all.

I am not imputing any motive to the management of the railways for whom I have the highest regard; but it would seem sensible to me if three words were added on the second line, so that it would read:

> Notwithstanding anything in the Railway Act or in this Act a carrier may, to meet competition, make such charges for the transportation of goods of the shipper as are agreed between the carrier and the shipper.

I am not suggesting that that is the best wording, but I think it gives expression to the thought which I have been instructed to express to this committee.

The CHAIRMAN: Thank you, Mr. Shepard.

Mr. CAVERS: Has anyone else any representations to place before the committee?

By Mr. Green:

Q. Have you any suggested amendment with regard to the first line of clause 32(1)?—A. No.

Q. It is pointed out there that "notwithstanding any thing in the Railway Act" would take away the protection contained in section 319 (3) of the Railway Act. Do you have any proposed amendment to overcome that weakness? —A. No. My instructions are that we would not object to the present wording of sub-section (1) if the three words "to meet competition" were inserted, because once that has been imposed as a condition on the making of an agreed charge, there are other sections than 32 which cover the unjust discrimination aspect of the matter. Those sub-sections are sub-section (10); and there is another.

Q. You mean sub-section (10) of section 32?—A. Yes sir.

Mr. HAHN: You feel that "to meet competition" provides a limitation in itself sufficient to protect everyone?

The WITNESS: That would be my feeling. I always recognize that anyone who studies the transportation question in this country must recognize the necessity of the railways being left free to meet competition. But we want to ensure that it is not done in a discriminatory way.

By Mr. Carrick:

Q. My understanding of the agreed charge is that the shipper gets a cheaper rate than under the ordinary competitive rates. If a railway company wants to grant it to a shipper, and if the shipper wants to take it, even if there is no competition, then why shouldn't they have the right to make an agreed charge?—A. We consider that it is not proper rate making, and the railways admit that they would not grant an agreed charge except in the case of competition.

Q. Then why put it in?—A. It is the same type of suggestion that I heard Mr. Green make to the committee yesterday about the compensatory factor. Perhaps it is an insult to suggest to the railway management that they would make an agreed charge without competition. But we in Manitoba would feel much more comfortable if those three words were put in there.

Q. If they are not going to do it anyway, then nobody is hurt. So why not leave them free to benefit the shipper?—A. It would benefit the shipper who gets that rate, but there are other shippers who would have to cover the overall revenue requirement of the railways, and their rates would have to go up.

By Mr. Green:

Q. Your objection is that it would undermine the whole system of railway rate making in Canada.—A. I do not think it is right to say that we voice an objection to the principle of this bill. My instructions are to support the bill. The amendment I suggest in sub-section (1), I firmly believe, does nothing more than to give expression to what has already been stated by the railways before this committee.

Q. Perhaps we should obtain the opinion of the representatives of the railways concerning the suggestion that these three words be written into clause 32.

Mr. CAVERS: The minister might like to say a few words; at any rate it is time that he should deal with it.

Hon. Mr. MARLER: Mr. Chairman, I have listened with a great deal of care to the representations which have been made to the committee and I would like to say first of all that I listened with a great deal of interest yesterday while representatives of the trucking associations set forth their views with regard to this bill.

Listening to the brief as it was read yesterday I could not help thinking that the views that the trucking industry have put forward in their brief are in fact, as I think was said last night by Mr. O'Donnell, the same as were put forward in 1937, and the same that were put forward in 1938.

I had occasion just the other day to read some of the evidence given before the standing committee of the House when this Transport Act was introduced in 1938, and I noticed exactly the same pessimistic outlook on the part of the truckers, as to what would be the effect of agreed charges.

In 1938 it was represented that this would be the ruination of the highway transport industry. And again, twelve years later, in 1950 the royal commission presided over by Mr. Justice Turgeon said that similar representations were made again, that the agreed charge, if it was authorized, was going to ruin the trucking industry.

Late in 1954 when representations were made to the royal commission on agreed charges, again the truckers represented that if any change was made in the system of agreed charges it would be the ruination for the trucking industry.

Well, Mr. Chairman, perhaps not being in the trucking industry, I may be freer to take a more objective view of it. But I cannot convince myself that this pessimism so often repeated and so often expressed has a solid foundation in fact. I cannot help thinking that we are all agreed that the trucking industry fills a vital need in the economy of virtually all countries, and certainly so far as Canada is concerned.

It seems to me that we all can think of countless examples where the truck can render more useful and more efficient service than any other means of transportation that is at present available, and, Mr. Chairman, I find from the brief of the Canadian Trucking Association itself on page 36 that the associations of American railroads sent out a questionnaire to shippers asking them to state the primary reason for their use of the common contract with private trucking services. It says:

> The questionnaire dealt with the movement of merchandise and the replies were given separately for inbound and outbound traffic. A complete report of the results of this questionnaire is attached as Appendix D of this submission.

Then we come to the significant clauses of this report, as follows:

> On the inbound traffic, shorter transit time was given by 78 per cent of the shippers as their reason for using trucks. Lower costs were cited by 12 per cent.

I might add "by only 12 per cent". In other words, if I may interpret this statement, it was not a matter of rates that persuaded the mass of those people to use the trucks. It was because of the shorter transit time. In only 12 per cent of the cases was the lower cost a factor. I am not suggesting for an instant that cost is not a factor, but I think convenience is the prime factor.

I am suggesting that these findings and this citation from the brief of the Truckers Association demonstrate what I said a moment ago that there is a place in the transport industry for trucking and that nothing that the railways can do by way of agreed charges, competitive rates or any other device would change the habits of shippers because the truck can do something that only the truck can do and that the railway cannot do.

If I may go on with the brief, "a variety of other reasons, particularly less handling, less marking and packing, and less loss and damage, were cited by 10 per cent of the shippers". It seems to me that in this paragraph of the brief you have a most convincing argument as to why the trucking industry is not going to disappear regardless of whether or not there are agreed charges and regardless of the procedure that the railways or other carriers may have to follow in order to bring an agreed charge into effect.

Now, Mr. Chairman, I think that we in this committee can take a very objective view of the situation. The fact that I have responsibilities in regard to the administration of the Transport Act and the Railway Act does not prevent me from thinking objectively that here are two industries which are complementary—competitive, yes, for a certain amount of business, but complementary—and it seems to me that it is perfectly obvious that the two must

go on together. In other words, if I turn to page 40 of the brief of the Canadian Trucking Association I find the following: "In the heat of controversy it should be remembered that over a considerable range of their operations, rail and road transport complement each other rather than compete, both individually performing those functions for which they are best suited technically." I am not quoting the rest of the paragraph, but I do not think I am deforming the sense of it by reading only that part.

What are we proposing to do by this legislation, Mr. Chairman? Essentially I think—if I might put it in one phrase—we are trying to simplify the procedure to be followed in order to bring an agreed charge into effect so that the railways may be on a more nearly equal basis of competition with highway transport. I would like to emphasize, just as was emphasized when agreed charges were first introduced, that they are and always have been considered to be an instrument of competition between railways and truckers. They are in England, and they are in Canada, and I think that the committee should be impressed by that principle because I think that principle explains a number of the provisions to be found in the existing legislation which are in turn reproduced in the bill which we are now considering.

How does one go about bringing an agreed charge into effect? First of all there must be an agreement between the railways and a shipper or one or more shippers. Now, we all know that the shipper is only going to sign the agreement for an agreed charge if it is satisfactory to him. It may be that not every single provision is satisfactory but on an overall evaluation of it it must be satisfactory, as otherwise he would not sign it. I am not persuaded that those who have suggested that people must go into agreed charges because someone else has signed them are really putting before the committee a fair view of the situation. No one is bound to do it. He can use whatever form of transportation best suits him in getting the product he produces into the market into which he sells. Well, Mr. Chairman, the railways, let us say, and a shipper agree on the charges for the transport of the shipper's goods. An example to which I referred in the House of Commons the other day was an agreed charge for the transport of canned goods and pickles. A large number of shippers started in with a number of railways, not just the Canadian National or the Canadian Pacific,—and if one examines the agreed charge, one will find that it is for the transport of 85 per cent of the shippers' goods moving from a group of stations in eastern Canada to another group of stations in Alberta or British Columbia and there are tariffs for the various movements. If anyone would like to see the agreed charge I will be glad to give it to him afterwards. Essentially, however, here was an agreement made by both parties setting forth that 85 per cent of the business was to move under this agreement leaving the shippers entirely free with regard to the business they were shipping in eastern Canada and free also as to 15 per cent of the business they might be shipping into what I might call western Canada although I mean specifically Alberta and British Columbia.

Well, Mr. Chairman, we propose that if a new agreement should be made under Bill 449 it will not be necessary as it is at present to submit that charge to the Board of Transport Commissioners. Why has Judge Turgeon recommended a change? He has recommended a change because as it is now it is not an effective instrument of competition. Let me ask the members of the committee to put themselves in this position. Suppose you were shipping goods and you were being asked to sign an agreed charge and the terms were most satisfactory to you. You would then ask yourselves how long it would be before it comes into effect? What am I going to have to do? How long will it be before the Board of Transport Commissioners? Mr. O'Donnell last night cited a case where an agreed charge was made at the beginning of April and it was not until the end of September before the agreed charge came into

effect. Now, I cannot help thinking that if I was a shipper I would say, "I have enough trouble; please spare me the necessity of having to spend another four or five months dealing with an agreed charge for the transport of my business," and it seems to me that it is only fair to the railways to put them in the position to conclude an agreement as speedily and in the same way as their competitors can do—as a matter of fact, I should not say "In the same way" but in a way that will enable them to meet the kind of competition that a trucker can offer—where the whole thing can be settled in a few minutes or over the telephone and perhaps with a handshake and that is all there is to it.

I want to emphasize that the agreed charges must be filed with the board. They are not secret as they may be in England. They become public by filing with the board and notice must be given of them, and they do not take effect until 20 days after they have been filed with the board, so that other shippers will be in the same position as those who sign the agreed charge and can either by consent of the railways become a party to the agreement, or if the railways refuse to allow them to become a party they will have the right to apply to the board in order that the board may fix a charge similar to that prevailing under the agreed charge. And if the hon. members will look at subsection 10 they will find the whole procedure outlined there. They will see that a shipper who has been discriminated against because he has been left out of the agreed charge may go before the board and ask the board to give him, in spite of the attitude of the railways, a charge similar to that provided for in the agreed charge. In other words, subsection 10 is not new and it gives every shipper the right to fair treatment. The railways cannot discriminate against him by saying, "We do not like doing business with you; we do not want to do business with you." So long as a shipper is in the same conditions as those who benefit from the agreed charge or who are parties to it, he is entitled either to become a party with the consent of the railway or in spite of the railway's attitude under an order of the board.

Now, there is another new provision in Bill No. 449. At the present time agreed charges may be made for some considerable length of time. The board has the right to approve them either with or without a restriction of time, but at the same time it might be that parties might make an agreement for three years. Under Bill 449 no matter what may be the term of the agreement at the end of one year the shipper or the carrier may terminate it on giving 90 days' notice. In other words, there is no long term situation that can be created by the shipper and the carrier that will prejudice either one of them. But I do want to emphasize the fact that the agreed charge having been made and having become effective the shipper and carrier know where they stand for twelve months. I think it is very valuable, as Mr. O'Donnell stated last night, to a shipper to know that for twelve succeeding months at least what his shipping costs are going to be into his own particular market.

Now, Mr. Chairman, there is a provision in the bill for complaints. Judge Turgeon—I think the reasons are obvious from reading his report—has suggested that after an agreed charge has been in effect for three months any carrier or any body representative of carriers or any association or any body representative of shippers shall have the right of complaint; and the right of complaint is to complain to the Minister of Transport that the business of the carrier or the business of the shipper is unjustly discriminated against or that it is placed at an unfair disadvantage; and the minister may, if he is satisfied that in the public interest—formerly it said in the national interest—if he is satisfied it is in the public interest he may refer the complaint to the Board of Transport Commissioners for investigation and the board in its investigation may order cancellation or may vary the charge. When you

examine clause 33 you will find there is included a provision that when the board examines an agreed charge it is to have regard to all considerations that appear to it to be relevant and in particular to the effect that the making of the agreed charge has had or is likely to have on the net revenue of the carriers who are parties to it. Here is fair warning to the carriers that the agreed charge must be made on a basis which is compensatory. They know that when a charge is referred to the board for investigation if it is found to be non-compensatory they can reasonably anticipate that the board will cancel it.

I do not believe that the railways have any interest in making agreed charges which are not compensatory. After all, the purpose of the agreed charge is to make money for the railway, not merely to add to the expenditures and revenues. I do not believe it is realistic to assume that for any petty temporary advantage that might be gained over some other form of transport the railways are going to introduce agreed charges for the purpose of putting somebody else out of business. I think that if that is what was in their minds the competitive rates would be a much more effective weapon for doing so because the competitive rate has a short term and there is no commitment to maintain it for a given term the way there is in the case of the agreed charge. And if there were such sinister designs on the part of the railways they would not need to resort to agreed charges, they could make use of competitive rates wherever competition exists.

Obviously the competitive rates do not exist where there is no competition, but where there is competition they are a weapon which the railways can use to stifle competition against them.

Mr. Chairman, I do not want the members of this committee to believe I have come here with my mind firmly made up to listen patiently to all representations which are made to this committee but to refuse to consider any amendments whatever to the legislation which is before us.

The Canadian Truckers Association, in particular, have urged that they should have the right to appear, and if you like, to complain against agreed charges. I am not going to deal with the exact text of the amendment which they propose as you all have had an opportunity of reading it. But the point I would like to make is that in the first place the truckers are not, in the usually accepted sense of the word, regulated in the same fashion as the railways. My understanding is in a general sense—and I do not want to be taken too literally—that this applies in every one of the individual provinces of Canada. I do not think that their rates are more than ceilings much like many of the railroad rates, that the rate to be charged must not go beyond a certain unit or beyond the rate fixed and filed with the regulatory body where a regulatory body exists. But I was somewhat interested in the fact that although the brief endeavours to suggest that regulation has gone quite a long way I noticed when the brief was read yesterday this phrase is in it which I think is rather indicative of a situation which exists in the trucking industry. Here is what appears on page 21:

> Some of the truck operators on the Montreal-Toronto run, according to our investigation had themselves been cutting below the railroad rates prior to the May, 1954, rail rate cuts.

Of course we know perfectly well cuts are reductions in tariffs. I can speak as far as the province of Quebec is concerned; they have not asked the government to proclaim a Motor Vehicle Transport Act in Quebec, so there is no regulation in Quebec over inter-provincial highway transport and there can be no regulation of rates on the Montreal-Toronto run. We do not com-

plain of that. I am not asking that the trucking industry be regulated. All I am saying is that it is not an industry where rates are regulated in any way comparable to those of the carriers governed by the Railway Act or by the terms of the Transport Act.

I would also like to point out that, I think wisely, and I think also to the credit of the Canadian Trucking Associations, they do not attack the principle of agreed charges. I see, for example, on page 61 of their brief:

> We have already stated in this submission that we are not here to attack the principle of the legislation which has been recommended by the Royal Commission on Agreed Charges.

I do not want anybody to think that that statement by the Canadian Truckers Association is an endorsement of every clause in the bill because I do not so interpret it, but I do interpret it to mean that the truckers are not opposing the agreed charge legislation although they have some suggestions so far as charges which they think should be made are concerned.

Now they say:

> We would like to have a right to complain.

In effect they ask the committee to so modify Bill 449 that they will be in the same position as one of the regulated carriers or as an association or body representative of the shippers of a locality who may complain to the Minister of Transport in respect of an individual agreed charge. I find it very difficult to accept the principle that the truckers are putting forward. What they want in effect is the right to object to the charges which their competitors propose to make.

On the other hand, the railways have no right, nor will they have an opportunity of objecting to the charges which the truckers may make with respect to the shippers. I do not make any complaint about that situation at all. I think it would be probably a very unfortunate thing for those who wished to make use of truck transport if the railways could come in and say to the truckers: you are charging too low a rate. I think that those who make use of trucks should be able to make use of them on a competitive basis until some regulation is introduced by competent authority to deal with those points. I say I do not believe that the railways should object to the negotiations which may be entered into by truckers and shippers and for the same reason I do not believe that the truckers should object to agreed charges concluded between the railways and shippers on the other hand. I naturally have not been unaware of the fact that the truckers have for long sought to have the right to appear and express their views with regard to agreed charges. They have sought to appear before the Board of Transport under the present legislation, but the board, not I, has said "you are not a carrier within the meaning of the Transport Act and you have no place before us" just in the same way as it might have said this morning to the Irish Shipping Company and Saguenay Terminals "you are not regulated carriers affected by the terms of the Transport Act and you have no place to complain here with regard to agreed charges."

But, Mr. Chairman, I said a moment ago that I have got an open mind on this question of the rights of the truckers and I think I can say quite candidly to the committee that the government has not in mind at this time, either after listening to these representations this morning, or at any time, the thought that it would be desirable that any mode of transport in Canada should be destroyed and eliminated. I think that the procedure recommended

by Judge Turgeon will be properly used by the railway companies and the regulated carriers and that the trucking industry will have no greater ground for complaint than that, unfortunately, they are losing some business because of agreed charges.

But unfortunately that is the purpose of an agreed charge—the agreed charge is to enable the railways to compete for the business—not to steal it; nor as was suggested, to ask the truckers to give them some of their business. All we ask is that the railways be placed on something like a competitive basis with the truckers.

As I have said, I have been conscious of the fact that the truckers would like to have the right to appear before the Board of Transport Commissioners, even though they are not regulated carriers and even though they would come in to tell the railroads "you are charging too little and you are going to do us harm in our business;" and I have been trying since this bill was printed and distributed to find some case in which a trucker would have a legitimate ground of complaint against an agreed charge. I tried when Mr. Magee was giving his evidence to have him give an example of some case where a trucker would have a legitimate ground of complaint, and my own doubts were not set at rest when the best I could find in the brief was the paragraph which begins on page 67, which reads as follows:

> One may say that the Minister of Transport is a very busy man—
> I thought that was a very truthful statement—
> —and the Canadian Trucking Associations represent 7,000 truck operators; every time an operator is hurt by an agreed charge he will want to appeal to the minister.

Is not that in essence exactly what the truckers want to have the right to do every time an agreed charge is made? It would have the effect of diminishing in some degree the business he is carrying, and it is natural and human that he should want to complain. I think it is natural and perfectly understandable but I do not believe, because agreed charges are intended to be an instrument of competition, that every time the instrument is used with efficacy the use of the instrument should be interfered with and in effect paralyzed by the trucker. At present he has not got the right to go to the board to complain about an agreed charge and ask that it should not be introduced or find some reason why it should not be made effective. I think our experience has shown that in the past there have been too many cases where objections have been made for the purpose of gaining time. I do not think that is the kind of objection we ought to countenance and approve.

I have this feeling about the situation, however, that if this instrument of agreed charges were being misused—and I said earlier that I do not believe it will be misused—I believe that if it were being misused and that as a result of the competition of agreed charges, the future of the trucking industry or the future of that segment of it occupied with the transport of goods between one point and another was menaced and threatened, that something ought to be done. For that reason, Mr. Chairman, I am going to ask one of the members of the committee to propose an amendment to clause 33. I am going to ask that copies of the amendment be distributed, but I am not going to ask that it should be proposed immediately. I think Hon. Members would probably like to have it before them.

In effect the amendment which I would like to be proposed would enlarge the operation of clause 33.

As I indicated, the amendment provides that

> where an agreed charge has been in effect for at least three months
> (*a*) any carrier, or association of carriers, by water or rail, or

(b) any association or other body representative of the shippers of any locality may complain to the Minister that an agreed charge is unjustly discriminatory against a carrier or a shipper or places his business at an unfair disadvantage, and the minister may, if he is satisfied that in the public interest the complaint should be investigated, refer the complaint to the board for investigation.

And now it is conceivable—and I will say quite frankly that I believe this is pure theory and I doubt very much if the case I have in mind will ever become a reality—that the railways may misuse this power to make agreed charges, and the trucking industry between any two given points in Canada may be threatened with extinction and elimination. I have suggested that without having to wait for this period of three months mentioned in subsection 1 that the:

Governor in Council, if he has reason to believe that an agreed charge may be undesirable in the public interest, may refer the agreed charge to the Board for investigation.

I am sure members of the committee will realize that that does not cover only the case where a particular form of transport is threatened with extinction. It would, I think, fully cover the case which we heard developed so fully before the committee last evening and today where agreed charges combined what are in effect provisions that are discriminatory against some mode of transportation which serves the public interest, and therefore I would like to emphasize that under subsection 2 a very wide discretion is going to be given to the Governor in Council—not to the minister, but the Governor in Council—to refer an agreed charge to the board for investigation.

If you will look at subsection 3 you will find that subsection 3 sets forth the conditions to be observed by the board when a complaint or an agreed charge is referred to it either under subsection 1 or under subsection 2. We have said:

In dealing with a reference under this section the Board shall have regard to all considerations that appear to it to be relevant, including the effect that the making of the agreed charges has had or is likely to have on the net revenue of the carriers who are parties to it.

In other words, they may say whether an agreed charge is compensatory or not.

And then,

if the board after a hearing finds that the agreed charge is undesirable in the public interest on the ground that it is unjustly discriminatory against any person complaining against it or places his business at an unfair disadvantage—

Now I think those words refer to the people who may complain under subsection 1. I do not want the members of the committee to be under the illusion that that covers the motor carriers, because it does not.

—or on any other ground,—

These are very full reasons for which they may consider that the agreed charge is undesirable in the public interest. And then comes the possibility which I outlined a moment ago of some form of transportation being threatened by a number of agreed charges—

and, if so directed by the Governor in Council in a reference under subsection (2), whether the agreed charge is undesirable in the public interest on the ground that it places any other form of transportation services at an unfair disadvantage.

I think you will find when you examine subsections (4) and (5) that they embody other provisions which you will find in clause 33 of the present bill and I don't think I want to deal with them beyond emphasizing the fact that in any of the cases which we have just discussed the board has power to cancel or vary the agreed charge.

I think what is important to bear in mind is this: I think it should be perfectly clear from that language that if the trucker—and I am going to take that example—complains that the institution of a particular agreed charge has cut down his business, we shall have to admit that the fact that it cuts down his business is not to be a ground of complaint.

The fact that the shipper agrees that a certain proportion of his business is to be carried by the railways, I think, is a matter which concerns primarily the shipper. The shipper did not have to consent to a stated percentage of his goods being made subject to the agreed charge. He could have refused to make an agreed charge if he so wished. But he did agree to a certain percentage, and I think that is not the concern of the motor carriers whose business might be diminished in consequence.

I think the railways are fully conscious of how undesirable it would be that the trucking industry should be extinguished. I think we have seen that they have hesitated in the past to institute competitive rates which would have put competitors out of business. I think they have shown a proper sense of public responsibility in that connection, and for that reason I do not believe it is likely that the trucking industry is going to be threatened with extinction in any part of Canada.

But where a situation has grown up that a mode of transportation is being threatened by a whole series of agreed charges, I think that if a body such as the Canadian Trucking Associations came forward and with the responsibility it has shown and demonstrated on a number of occasions said: "Here is a serious situation," I do not believe that the Governor in Council could refuse, in such an eventuality, to refer the situation and complaint to the board for investigation. But I want to emphasize that there is a great difference between the particular case of an individual trucker and the case of an industry which is threatened with extinction. I do not believe that the Canadian Trucking Associations, if I may judge by this brief, are going to say after this bill passes "This is a troublesome situation, and will you look into all this again."

I think if that case were to happen it would be because the situation had grown up over a reasonable period of time, and it was alarming and disquieting to the operators, and in their own judgment it was a kind of situation which ought to be corrected.

I would like to emphasize, as I did a moment ago, that this delay of three months does not apply to the action of the Governor in Council. He will not be paralyzed by the necessity of allowing three months to go by. He can act at once if he thinks it is desirable to do so.

I am sorry to have taken up so much time, but I would like to emphasize that this bill is based upon the recommendation of Judge Turgeon. Judge Turgeon, as you probably all know, carried out numerous sittings in several parts of Canada and for a long period of time in Ottawa itself. I think that everyone had an opportunity to appear before the commission and put forward his views and have them fairly considered by someone who, I think all will agree, is a recognized authority on transportation matters in Canada.

This bill which is before you—the amendment changes it only in a minor particular, I mean the amendment I have just talked of—puts into effect all of Judge Turgeon's recommendations. The differences in language between the bill and the appendix in Judge Turgeon's report are merely matters of legal

drafting. We have not sought to change his recommendations in any particular whatever, except one; the one particular which I mentioned in the House the other day and of which I would remind the committee now is that sub-section 9 does say something which it seems to me makes common sense, that where an agreed charge has been negotiated between carriers and one or more shippers, and where someone has been left out who later wishes to come in, that if the railways agree to it, he may come in and does not have to apply to the board for an order, as he would have to do otherwise under sub-section 10. So sub-section 9 of the printed bill is an addition to the recommendations of Judge Turgeon, but I think it is a logical extension of what he recommended.

Now, Mr. Chairman, the last thing I want to do is to pose as an expert on agreed charges. All I have tried to do is to explain to the members of the committee the meaning of this bill which is before us. But I would like to say that the government feels very strongly that the bill should be adopted so as to give the railways an opportunity to compete on more even terms with the truckers. And when I say on more even terms, I am sure that everyone will realize that large organizations such as the railways which are subject to the regulations that they are subject to can never really be on an exact footing of equality with the truckers. And the truckers would probably say no, that they never can be, because the railways always would have at their disposal other means, and whatever inequalities there might be in the practice of rate-making would be more than offset by the immense financial resources that the railways have at their command. But leaving out this rather natural view on the subject, I think that we are not being unfair to the truckers and that we are being fair to the railways in giving them a chance to compete for the business of transportation in Canada which is there for everyone.

Mr. NICHOLSON: Mr. Chairman, we have been sitting for over 11 hours in five or six sessions. If there are no more witnesses, would you accept a motion to adjourn and to continue tomorrow with a discussion of the bill.

Hon. Mr. MARLER: As far as I am concerned I have some engagements tomorrow in Montreal, and if it were possible to go on with the bill this afternoon and this evening, I would greatly appreciate it.

Mr. CARRICK: Have we any more witnesses?

Mr. GREEN: I understood that the minister was going to give consideration to some of these suggested amendments. There is only one clause in the bill.

The CHAIRMAN: Containing two sections.

Mr. GREEN: I mean that the bill has only one clause in it, but it deals with two different sections of the Act.

Hon. Mr. MARLER: Yes.

Mr. GREEN: Perhaps we could sit tonight.

Hon. Mr. MARLER: I do not really want to embark on a consideration of the amendments, but as I said at the time, the amendment which Mr. MacTavish proposed to sub-section 5 seems to me to be in order. That was a replacement of the words "has been" by the word "is".

If the committee thought it was desirable to revert to the wording of Judge Turgeon's appendix A, I would have no objection to an amendment in that sense. But I do not want to start playing around with the wording of sub-section 5 so that what we have in this part of this one and part of the other, and so, in the process, change the sense, and arrive at something which is a true hybrid resembling each of the parents but not being identical with either of them.

With regard to the amendment which was suggested by Mr. Brisset, I think that in that amendment we are dealing with a particular case. That is a case of something that does not exist at the moment, but the possibility that an agreed charge may in the future be made which contained clauses which are discriminatory against, let us say, the non-conference shipping lines. There may be other forms of discriminatory clauses contained in those agreed charges. I do not think they will be put in, but I am quite ready to say this: I believe that if it were represented to the government that an agreed charge contained provisions which were patently discriminatory against some form of transportation—I am not thinking only of conference lies or non-conference lines—I think that we would feel that we had a duty to refer the matter to the Board of Transport Commissioners, under sub-section 2 of this amendment, and I think that would give the board an opportunity of making the fullest inquiry.

I think I should say also quite plainly, Mr. Chairman, that I am not prepared to accept an amendment which is going to give an unregulated carrier a status before the Board of Transport Commissioners that it has not got under the existing legislation, particularly when I think that, under the amendment we have proposed, adequate safeguards are provided for interests that might be prejudiced by an agreed charge that had not been approved by the Board of Transport Commissioners.

Mr. HERRIDGE: Mr. Chairman, I just want to ask the minister one question. I notice in the bill and in the minister's amendment the words "public interest" are substituted for the words "national interest." Would the minister explain to the committee the distinction?

Hon. Mr. MARLER: I think, Mr. Chairman, that the national interest is a much broader interest than the public interest. The national interest means in effect you would have to feel that the entire nation was being affected by some state of affairs that was being complained of whereas I think the public interest can be used to apply to a much smaller segment of the country than the use of the word "national." The words "national interest" obviously mean something relating to the nation whereas the word "public" can have several connotations. Actors have their public and politicians, I suppose, it can be said, also have their public; but the public interest as related, for example, to the shippers of a locality is something that is different still.

I am asked if I would say a word about the amendment Mr. Sheppard spoke of a moment ago. I think I should say two things in answer to what Mr. Sheppard has suggested. The first is that it is perfectly obvious without it being said that the agreed charge is intended as a competitive weapon. It is intended, in other words, in order to meet competition. I do not believe there is any particular virtue in saying "In order to meet competition", but I think there is quite possibly a case where there would be an objection to putting it in. Mr. Coyne in his example this morning, when I asked him a question, cited a case where a shipper was not being served by the same carrier as the one which had made an agreed charge and he might reasonably wish to apply for a fixed charge to the Board of Transport Commissioners, and I am sure that if we were tied down by the use of the words "to meet competition" that we might find it is impossible for the board to grant a fixed charge to someone who was entitled to the same treatment as someone who had made an agreed charge. I think I should sum up my thinking on the subject by saying that I see no useful purpose in putting it in and I can see some real objection in our doing so.

Mr. HAHN: Mr. Chairman, the minister gave us quite an extended discussion on the witness' remarks and I have just one or two observations to make which I think would have a place in this discussion. The minister

mentioned the charge that agreed charges would ruin the trucking business as outlined in the truckers' brief, and he drew to our attention the fact that the truckers felt about 12 per cent of their business was done because of the price factor.

Hon. Mr. MARLER: That was the questionnaire, yes.

Mr. HAHN: Yes, it was in their submission. I have done some hasty arithmetic which may be wrong, but as I recall it an observation was made that the railway companies complained that $340 million of the business is done by trucking today. The truckers say they do only $200 million. However, using that 12 per cent figure and saying that the truckers would lose all of that which I do not believe is true—

Hon. Mr. MARLER: Mr. Hahn, I think perhaps we could save time if I interrupted you. The 12 per cent were merely 12 per cent of people who were using trucks for the transport of their goods who were asked, "Why do you use trucks?" And 78 per cent said it was because it was shorter and more rapid and only 12 per cent said it was a matter of rates. It is not 12 per cent of any particular volume of business, but merely 12 per cent of those using trucks who said the prime consideration with them was rates.

Mr. HAHN: I was assuming that the 12 per cent would use the trucks. The two would equate each other—or possibly they would not—but even working it out on that basis, using the extreme figure of $340 million it would only give a gross of $40,800,000 to the railways which would not be the net deficit that the C.N.R. experienced this year. That is, if we work it down to the net. However, I am willing to accept your version of that, Mr. Minister, because I can very readily see that the 12 per cent of the people using it might very well be 50 or more per cent of the trucking business in which case if we use that figure, then 50 per cent of the truckers would be out of business by reason of the fact that they lost 50 per cent of the business to the railway companies—that is immediately, although other business may fall their way and they may go out to look for other business as good businessmen should do and thereby not entirely be lost to it.

Then there is the matter of it being compensatory. We have used the phraseology that railway lines might consider it insulting if we included it. I cannot quite understand that attitude by reason of the fact that the word was in the former Act, as I understand it. We are talking of removing it. If it was not insulting to them before, why should it become insulting now if we merely include it in this particular Act; and that in itself I consider is most important. I think I was extremely realistic in respect to the Monsen Clarke Steamship Company—

Hon. Mr. MARLER: The Monsen Clarke Steamship Company?

Mr. HAHN: I am sorry, yes, and the compensatory rate that put them out of business. I am now wondering if that is the rate that will be estimated for all the rail lines across Canada or just in those regions where the agreed charge comes into effect. I raise that question because in trying to get information of that type from Mr. Gordon, I believe it was, when he was here before us he indicated to me it was impractical to give us a division cost. Perhaps I received this information through correspondence I had with him, although it might have been through earlier hearings we held on the question. However, it does play an extremely important part in the overall decision as to whether or not a trucker can properly complain that he is being discriminated against by reason of the fact that the rate is non-compensatory. I can see where the rate would of necessity be low in the Montreal and Toronto regions because of the traffic that is carried, but let us take the region from Vancouver to Kamloops. It may not be quite so compensatory in that

particular area. That is why we should have some idea of what we are going to use as a guide in a position of that kind, and certainly we must know what the companies themselves are using as a guide. Yesterday I made the suggestion that the British Columbia government had regulations in respect to traffic rates. Today we have a representative here from Manitoba. I was wondering whether he could inform us whether the truckers there might change their charges at will similar to what the minister suggested today by a handshake at the door, or whether they have regulations respecting the traffic rates in their province which would disallow that.

Coming back to the non-compensatory rate—

Hon. Mr. MARLER: I think it would be simpler to clear up that the rate must be compensatory in this sense that it must pay for the charges of the services covered by that rate.

Mr. GREEN: The bill does not say that.

Hon. Mr. MARLER: I am talking about what is meant by the rate being compensatory. It in effect pays the railroad to carry the goods at that price. It applies to the transport of goods from origin to destination.

Mr. CARRICK: Mr. Hahn said the word "compensatory" was in the Act before. I could not find it.

Hon. Mr. MARLER: It isn't.

Mr. HAHN: I understand you to say it was.

Hon. Mr. MARLER: I used the word very loosely.

Mr. HAHN: :I think it is not realistic to say a railway will not operate on a non-compensatory rate by reason of the fact that the railways are like any other business and it is their business to get business and if it means the elimination of another industry, as it might in this case, the charges which would be made will not stop them from—perhaps I should not use this term—stooping to that level of doing business in that fashion. I say that with all respect to the railways for this reason that big business, some of the biggest businesses in the world—and I am thinking of large retailers in the United States—stoop to that level with the hope of depriving their opposition of business. It was not very many months ago I remember reading in the paper of a certain firm in New York giving prizes away because the other firm was selling them for five cents each; there was only one object, to attract the business. If the railways should see fit to attract the business by coming to an agreed charge where we cannot determine what the compensatory rate is then there is nothing to stop them bringing their price down to any level they wish.

I was going to suggest that the term "compensatory" be included in this because my understanding was it was in it previously; apparently it was not, but I think we might be well advised to certainly consider it.

There is one other factor and that is the right to redress which the truckers should have. As I understand the amendments you propose in respect to the section they do not include the truckers and probably should not, under the circumstances, but there is no provision made in the Act either that a provincial board might make representation in respect to redress for a particular industry that might be embodied in its own ranks.

Possibly that might be given some consideration and they could make their representation first to the provincial body which sets up regulation in respect to price and let them get their redress through that body who in turn makes representation to the government.

Hon. Mr. MARLER: Under subsection (2) anybody can make a complaint to the government and it is merely sufficient that the government should be persuaded that there is a good case to be able to refer the charge to the Board of Transport Commissioners.

Mr. HAHN: This is subsection (2) of the amendment?

Hon. Mr. MARLER: Yes.

Mr. HAHN: I misinterpreted that.

Mr. HANSELL: Does that include the truckers?

Hon. Mr. MARLER: The truckers can complain in the same way as anyone else. I do not say in the amendment that a trucker can complain of any charge, but the fact is if a trucker does complain the government can act under subsection (2).

Mr. HANSELL: Then the amendment proposed by Mr. Magee to add "or any motor vehicle transport operator or association of motor vehicle transport operators" in the light of your statement is superfluous?

Hon. Mr. MARLER: I cannot accept that in that form. As a matter of fact, I think while they do not have a statutory right to complain to the minister they do have the right to complain to the government that a situation has grown up which is undesirable in the public interest and if the government is persuaded that the representations are well founded it may refer the agreed charge to the board.

Mr. HANSELL: In other words, they can take advantage of the bill as it now stands without their name being specifically designated in it.

Hon. Mr. MARLER: I think that is the practical effect.

Mr. HERRIDGE: This discussion is on amendments and sections in the bill. Could it not more properly take place when we start the discussion on the bill?

Mr. HAHN: I do not think I was discussing anything which appears in the bill.

Hon. Mr. MARLER: I think you will find it in section 33.

Mr. HAHN: I understand I am out of order and I will abide by the rules; but, Mr. Chairman, if I am not out of order, I would like to continue with what I was saying. There is this other question which was raised by the Irish and Saguenay Steamship Companies. I just do not understand why there should be any objection taken to the C.P.R. carrying freight from Vancouver to London if it so wishes or Liverpool if it so wishes, provided it uses its own steamship lines, but I do take exception to the C.N.R. suggesting when it carries through a contract that any business it is going to conduct on a through bill of lading must of necessity, from Halifax, be carried by any other particular line or the Conference line.

Mr. LANGLOIS: They have obtained redress from the board in that respect. It has nothing to do with this bill.

Mr. HAHN: But at the same time it has been included since in further bills of lading, as I understood the evidence. The fact remains that if we are going to legislate and try to make it possible to deal properly with legislation of this kind and make it possible to carry on and keep all the businesses which we have in effect today in this country, I would strongly urge that some consideration be given to these thoughts that we must not permit even in an indirect fashion a combine, a form of combines, such as would appear to exist. I know under the Combines Act as it exists today possibly we could not prove that a combine exists where it does exist. But to say that before we take your shipment you must send it over somebody else's line, while there are others willing to accept it and carry it for less money, I do not think is quite right.

The other question I have in mind is an amendment and seeing that the committee has been so anxious to allow me to carry on at this time and have not interrupted me for the last few moments I will leave it at this point.

Mr. CAVERS: Possibly we could get to the Clause now gentlemen?

The CHAIRMAN: As there is only one clause in this bill, the record might be clearer if, in our detailed consideration, we referred to the sections and subsectons of the Act as they are cited in this bill.

Mr. GREEN: On this clause (1) there was a suggested amendment made by Mr. Sheppard speaking on behalf of the Manitoba government. He suggested that the words "to meet competition" be inserted after the word "may" as it appears in the second line of the clause. I think there is good reason for having those words inserted because the minister himself has stressed the fact that this bill is to help the railways meet competition. The only reason for agreed charges is to meet competition. That was covered by the law as it stood before in subsection (2) of section 32. Any such agreed charge required the approval of the board.

> (2) Any such agreed charge requires the approval of the Board, and the Board shall not approve such charge if, in its opinion, the object to be secured by the making of the agreement can, having regard to all the circumstances, adequately be secured by means of a special or competitive tariff of tolls under the *Railway Act* or this Act.

That clause again stresses the aspect of competition and it is to be taken out of the Act. There is no longer to be a prior decision of the board. These agreed charges will automatically go into effect once they are negotiated. I do not believe it is sufficent to say that the railways will not do this, or will not do that. After all, we are here to define the law and I think the law should say that these agreed charges are for the purpose of meeting competition and not for other purposes.

Take for example the playing of favourites. Without such a restriction as I have referred to, the railways could make an agreement to fix a lower charge with some friends of the railways in circumstances where there is no competition at all. For example, they could agree to give Mr. A or Mr. B of such and such a company a special consideration. That is absolutely impossible under the Act as it is now in effect because the Board of Transport Commissioners has to decide on the application. That is one of the things upon which the Board of Transport Commissioners would have to be satisfied, namely, that the agreed charge was being put into effect to meet competition, and I think the purposes of the old law would call for the insertion of those words which the Manitoba government has suggested, and I do so move, Mr. Chairman.

Hon. Mr. MARLER: Mr. Chairman, I would like to point out to the committee that the present statute describes an agreed charge in virtually the same terms as this subsection we are dealing with. There is no change in it. We have had a period since 1938 up to date during which this definition has stood up and quite candidly I do not share Mr. Green's view that merely because we are dropping the approval of the board, merely because we don't say that if the same objective can be secured by a competitive rate that we may not make an agreed charge—the fact is that a competitive rate has proved to be quite a useless method of trying to meet the competition we are dealing with here, as Mr. O'Brien made perfectly clear during his evidence before the committee, so I don't think the matter of the reference to the competitive rate is really material to the argument as to whether we should add the words "in order to meet competition" or not. I do not believe that merely because

we are not asking for the approval of the board we should put the words in now, even though we have not found it necessary to have them in for 18 years. I don't know that I attach too much importance to it. What I am concerned with is the possibility that where you have set up agreed charges in conformity with the Act here, you find that there is some other shipper who meets the condition of subsection (10), that is to say that he has goods which are the same or similar goods as the goods for which an agreed charge had been made, but where they were not served by the same carrier. In that particular case, if he were not being served by the same carrier—there might not be any competition—he might because of these words be deprived of the right to a fixed charge; and consequently I am very fearful that, though we know all agreed charges are intended to meet competition, we would by using these words prevent some shippers from benefiting from agreed charges. Mr. Coyne gave an excellent example this morning, and I don't want to preclude his clients from getting the benefit of a fixed charge.

Mr. GREEN: The right of the other shipper would not be affected by putting in those words because his rights are expressly covered under clauses 9 and 10 of section 32, but the main clause in the whole agreed charges provision is this clause (1) of section 32. That is a fundamental policy-making clause:

> Notwithstanding anything in the Railway Act or in this Act, a carrier may make such charges for the transport of goods of a shipper as are agreed between the carrier and the shipper.

The one purpose for which that has been made has been to enable the railways to meet competition. It was not done for any other purpose, but purely and simply, as I say, to help the railways meet competition and I believe that those words should be in that section or in that particular clause so that there can be no misunderstanding of the purposes of the legislation.

The words are vital because if under clause 33 an application is made to have an agreed charge upset it would be on the basis: was that agreed charge made to meet competition? If it is made for some other purpose, for example to help out some "pal" or something of that kind, it can be cancelled. I am not saying that that would be done, but I don't think we should simply accept the situation that the railways will do nothing unfair or wrong under this legislation. The railways are in business and they are run by business men who will abide by the law but who probably will not go too far out of their way to see that their competitors are not injured, and I would suggest that those words "to meet competition" are vital words as suggested by the Manitoba government which throughout has been very alert with regard to all this transportation law, as have the other western provinces. This is a matter for very serious consideration before this committee. The Manitoba government would not have made that representation without having given the matter careful thought and without having good reasons for doing so. Mr. Shepard has appeared before the Board of Transport Commissioners on many occasions. He is one of the leading experts on freight rates and transportation in Canada. He has been before the committee which considered the Railway Act two or three years ago and I would suggest that this amendment which he has proposed is a good one and that it should be adopted by the committee.

Mr. HOSKING: I would like to give one reason which I know about, Mr. Chairman, why this amendment should not be adopted. A steel company proposing to develop a field in northern Ontario have, in order to estimate their cost to go to the railways and get an agreed charge so that they can decide whether it is profitable to develop that field or not. The provincial

government railway will be giving them an agreed charge without any competition on the ore which they handle. It brings to my mind that it is a pure case of the development of the country, and that it is of benefit to the country that an agreed charge be made. There would be no one in competition with them because there is only one line in there. But the railways must be in a position to give them an agreed charge so that the company can calculate its costs.

Mr. GREEN: A situation of that kind is not met by an agreed charge at all. It is met by a special rate. All the railways have met that kind of situation where they are going to get a lot of hauling from a particular development, and in that case they make a special rate. But that is something entirely different from an agreed charge. I think if you will check it up you will find that that is the case.

Mr. HOSKING: This will be an agreed charge, and if anybody else up there desires to take advantage of it, he will be able to ship along with the steel company.

Mr. GREEN: There was an agreement of that kind made I think in connection with the Sherridon to Lynn Lake branch of the Canadian National Railway; a provision that there should be a certain rate on the hauling of the concentrates from that mine. I think there was a similar agreement made for the extension from Terrace to Kitimat with regard to the hauling of aluminum products. Those are covered by a special agreement, and are not in the nature of an agreed charge.

Mr. HOSKING: If there should be another company up there which finds ore, then would the railway not be bound to ship their ore at the same rate, if there was an agreed charge?

Hon. Mr. MARLER: Mr. Chairman, one of the things which bothers me very much in connection with this proposed amendment is this: Mr. Green I think is a little inclined to be thinking of an agreed charge as being applicable between only two points. But in the agreed charge to which I referred earlier, the one for the shipment of canned goods, I have a whole batch of names of the places to which the shipments are to be effected, and which are covered by that agreed charge. I will pick some names out at random. Perhaps the members from British Columbia will take exception to them, since they know the situation there much better than I do; but let us take Marpole, British Columbia, where there is no other form of transportation into Marpole except the railway.

Mr. GREEN: Marpole is in Vancouver city.

Hon. Mr. MARLER: Well, let me think of another one.

Mr. GREEN: Marpole used to be in my riding.

Hon. Mr. MARLER: I did not realize that, or I would have picked some other spot. What about Fort Langley?

Mr. HAHN: Fort Langley is in my riding and they have the Canadian Pacific, trucks, and buses.

Hon. Mr. MARLER: But suppose you have not trucks or buses. The point I want to make is this: supposing one of those 25-odd stations in British Columbia has no form of competitive service other than the railway. The railway is going to say, because of Mr. Green's amendment, "We are sorry, but you cannot have an agreed charge going into this place, because there is no competition". I think that would limit the scope of the agreed charge, which is to give the people the benefit of lower rates. Therefore I do not want to see Mr. Green limit the scope of this agreed charge by saying that there must be competition.

Mr. CAVERS: Let us have the question!

Mr. HANSELL: When we take a vote on this amendment, does that preclude any other amendment on this clause? I would like to make one.

The CHAIRMAN: All those in favour of Mr. Green's amendment please signify? Those contrary?

The result of the vote is 20 against, and 7 for.

Mr. HANSELL: I am not going to take up the time of the committee by making any remarks. But I do believe frankly that these two shipping companies which appeared before us did make a case. All they desire is that the board may disallow any agreed charge in certain connections. Therefore I move their amendment, which is a very simple one. You all have copies of it. Do you want me to repeat it?

Mr. CAVERS: Does it apply to this section 32(1)? We are dealing with subsection (1) and I do not think that comes under it.

Mr. HANSELL: Very well.

Mr. HAMILTON (*Notre-Dame-de-Grace*): On subsection 1, I make my initial remarks exactly the same as Mr. Hansell has made them, and I think that the shipping companies made a very reasonable case. They themselves have pointed out a situation which, if it does not exist today, could very well exist in the future, and it would perhaps be a natural outlook of this particular set of circumstances under this particular bill. You have your railways in Canada with interests in ocean steamship lines.

It certainly is in their own interests for the railways to take every possible measure of business that they can for their own ocean lines. Now, the minister himself in his remarks said that he envisioned these agreed charges as being applicable to Canada and to Canada alone. It would therefore seem to me that we could fit into the minister's observation and still deal with a large part of the objections of the shipping lines by making an amendment along the line which I suggested earlier. But before I move my amendment I would like to have an elucidation of one point, and that is whether agreed charges ever apply to movements of freight between points in Canada and points in the United States.

Mr. CAVERS: Yes, that is covered by subsection 4(b).

Mr. HAMILTON (*Notre-Dame-de-Grace*): In that case—

Hon. Mr. MARLER: No. The hon. member is quite right. They do not apply to the transportation of goods between points in Canada and points in the United States.

Mr. HAMILTON (*Notre-Dame-de-Grace*): Therefore I move that we insert the words "in Canada" following "shipper" in subsection 1, and that would restrict these agreed charges to the rail portion of any shipment of goods from a point in Canada to a point overseas. I should point out to the committee that that does not deal with the other objection raised by the representatives of the Saguenay Terminals Limited, the situation where goods are being transferred from a point on the east coast of Canada to a point on the west coast of Canada, and where the railways might be tempted to drop their rates temporarily in order to deal with ocean competition which was taken through the Panama Canal. I leave that to the future. I think specifically in this case, because of the minister's own words, that these agreed charges are to apply in Canada. We are making the law here and we might just as well write into it the fact that they apply in Canada so that there may then be no doubt that there will be a complete measure of protection against any attempt on the part of the railroads to enter into, shall we say, a monopoly of this transportation from a point in Canada to a point overseas.

Hon. Mr. MARLER: What is the amendment?

Mr. HAMILTON (*Notre-Dame-de-Grace*): That the words "in Canada" be inserted after the word "shipper" in line 9 of section 32, which would then read as follows:

> Notwithstanding anything in the Railway Act or in this Act, a carrier may make such charges for the transport of goods of a shipper in Canada as are agreed between the carrier and the shipper.

Hon. Mr. MARLER: Surely the hon. member realizes that the amendment which he proposes is descriptive of the shipper.

Mr. HAMILTON (*Notre-Dame-de-Grace*): I realized that, actually, as I was reading it.

Hon. Mr. MARLER: I do not think it does, Mr. Chairman, because as was clear from the evidence before the committee the agreed charge does not necessarily apply to the transport in Canada of goods affected by the agreed charge. We had Mr. Jones representing the Great Northern Railway yesterday who made it clear that his railway company may make an agreed charge for the shipment of goods from Vancouver to Toronto, let us say, but that is not for the transport in Canada of the goods of the shipper, and I take it also that we have the C.P.R. and the Canadian National competing between, let us say, Montreal and Halifax yet we know the C.P.R. passes through the state of Maine and therefore I could not accept the suggestion that we should say transport in Canada. I am quite ready to consider other alternatives, but I am not prepared to consider amendments which are going to make agreed charges impracticable.

Mr. HAMILTON (*Notre-Dame-de-Grace*): I think the minister has a point. I asked a question and the answer perhaps misled a number of us. I think rather than saying "in Canada" let us say "in the continental limits of North America" and that does allow the line in the process of transporting goods to leave a point in Canada, go south of the border and come back into Canada, but it still protects us from taking the goods to the seaboards and then forcing them under an agreed charge to go on a specific ocean line. Would the minister consider that?

Hon. Mr. MARLER: Does the hon. member think Newfoundland is within the continental limits of North America?

Mr. BATTEN: Be careful now!

Mr. HAMILTON (*Notre-Dame-de-Grace*): I must say that according to my definition it would be.

Hon. Mr. MARLER: The only trouble is I do not think the hon. member would be interpretng the statute, and I think we would have to have a proper view of it. I personally do not see the purpose of the limitation. I rather share the views that the hon. member has expressed with regard to clauses which are discriminatory against any particular carrier or any particular shipping line, but there may be reasons for it. I would like to draw to the attention of the committee the fact that although we have heard the evidence of the shipping companies and the non-Conference lines, we have heard none from the railway as to their side of the story, and I would not condemn them without knowing what the facts are, but it does seem to me that section 33, subsection (2) to which I referred earlier enables us to deal with a discriminatory situation of that kind and in order to cure that I do not want to put the agreed charges in another kind of strait jacket when I do not think that is the intention of the committee.

Mr. GREEN: The minister raised the example of the Great Northern. I point out to him that under subsection (3) of clause 32, subsections 1 and 2

do not apply to the Great Northern. There is no objection on that ground to the inclusion of the words.

Hon. Mr. MARLER: But, Mr. Green, the agreed charges that the Great Northern makes are going to be agreed charges under subsection 1 about which we were talking and they therefore cannot state the transport in Canada of the goods of a shipper and it is not only the Great Northern but also the C.P.R. going to Halifax and for all I know there may be countless other examples. In an effort to deal with the point Mr. Hamilton brought up—I do not think we should circumscribe the field within which agreed charges can be used.

Mr. GREEN: Has the minister any alternative suggestion to make? We had it clearly explained today that it would be possible for the railways to include in an agreed charge a proviso which would restrict the shipping by water to a line or lines of their own choosing. Ocean-going shipping is not in the Transport Act or under the control of the Board of Transport Commissioners, and it was never the intention of parliament that the railways should be able to make an agreed charge of that kind that ties up ocean shipping or of the kind that has a restricted proviso that you must ship by any one ocean liner. Can the minister not suggest some amendment to these sections which would meet that situation? The amendment proposed by Mr. Hamilton may not have been the proper one, but this is a situation which should be met. The railways should not be allowed to get away with this sort of thing, or to make provisions of that kind. It is perfectly obvious from the evidence that they have refused to abide by the order made by the Board of Transport Commissioners. In two cases, they worked out some method of getting around the actual orders made by the Board of Transport Commissioners. Are they to be able to use the agreed charges legislation as a third method of getting around rulings made by the board?

Hon. Mr. MARLER: Mr. Chairman, Mr. Green asked if I could not make an amendment. All I can say is that I can perhaps make an amendment, but I do not think I would make it to subsection 1. I think subsection 1 is perfectly proper as it stands now and I do think that the kind of case which Mr. Green has referred to is covered in clause 33.

I am not prepared for a moment to render judgment on the evidence of only one side—what we have heard from the Irish Shipping Limited and Saguenay Terminals Limited—but I am ready to say that there is an obvious principle at stake there, and that is that agreed charges could conceivably contain discriminatory charges that did not affect a particular shipper and did not affect a regulated carrier, and I think that when you come to section 33 I should be able to convince the committee they are taken care of in the amendment I have already suggested which will be proposed when we come to section 33.

Some Hon. MEMBERS: Question.

Mr. HAMILTON (*Notre-Dame-de-Grace*): I am just wondering if the minister plans to base his case on subsection (2) of section 33, because as I see it we may then be asked to pass this particular section and close further amendments on that, and then if we find that the minister has not convinced us under subsection (2) of section 33 we have rather closed the door, have we not? The thing that bothers me a little bit about it is that in explaining his amendment earlier the minister said he felt it should be possible for someone to persuade the Governor in Council that certain things were undesirable in the public interest, and as one who in the last two years has made a fair effort to persuade the government about certain things and has sometimes been rather unsuccessful, I have a certain amount of sympathy for some of

these other people who might have similar difficulties in persuading the government. I would rather see the thing written into the Act as legislation rather than left to the capricious desire or feeling of the Governor in Council because if some 51 members of the Conservative party cannot persuade the government about certain things, it might be rather difficult for one or two shipping companies to do so.

Hon. Mr. MARLER: Perhaps they might have more logic, however!

Mr. HAMILTON (*Notre-Dame-de-Grace*): The minister's point was well taken. Would the minister agree perhaps to letting this section stand—

Some Hon. MEMBERS: No, no.

Mr. HAMILTON (*Notre-Dame-de-Grace*): —and see whether it is going to meet the objection?

Mr. CAMERON (*Nanaimo*): I wonder if I could ask the minister a question?

Mr. LANGLOIS: You have the proposed amendment?

Mr. HAMILTON (*Notre-Dame-de-Grace*): The minister said he thought he could find something in section 33 and he also was talking in terms of an amendment.

Hon. Mr. MARLER: Not any further amendment.

Mr. CAMERON (*Nanaimo*): Would it be necessary, supposing one of the railways made an agreed charge agreement with a shipper for the shipment of goods from Winnipeg to Liverpool, for him to refer that part of the agreement which dealt with the ocean transport to the board or would he have to deposit that with the board?

Hon. Mr. MARLER: I think the answer is that the whole agreement for the agreed charge must be filed with the board. I think that is subsection (7).

Mr. CAMERON (*Nanaimo*): Are you not going to be faced, if you try to amend it, with an agreed charge that will be an agreement for the land charges from Winnipeg to Montreal and there will be another document which you will know nothing about?

Hon. Mr. MARLER: I do not think so.

Mr. HAMILTON (*Notre-Dame-de-Grace*): I do not see how you can control that by any amendment to this Act.

I would move, in order to get the matter on a basis of discussion to try to satisfy the minister that we have got all the possible points in North America into it, that we insert the words, following "Transport", "Within the continental limits of North America and Newfoundland" and that would mean that section 1 would read:

> Notwithstanding anything in the Railway Act or in this Act, a carrier may make such charges for the transport within the continental limits of North America and Newfoundland of goods of a shipper or as agreed between the carrier and the shipper.

That does cover North America. It leaves out the possibility of a monopolistic operation in which the rail carrier in North America uses his power to force goods into his chosen media for an ocean voyage.

Mr. BARNETT: The amendment proposed leaves out the most important part of Canada, namely Vancouver Island.

Mr. HAMILTON (*Notre-Dame-de-Grace*): I may state that I take the position that Vancouver Island is within the continental limits of North America.

The CHAIRMAN: All those in favour of Mr. Hamilton's amendment?

On division the motion was defeated.

The CHAIRMAN: Shall sub-section (1) of section 32 carry?

Carried.

We will adjourn now until 8 o'clock.

EVENING SESSION

JUNE 29, 1955,
8.00 p.m.

The CHAIRMAN: Gentlemen, we have a quorum. We are on subsection (2) of section 32.

Hon. Mr. MARLER: I would like to ask my friend Mr. Langlois if he would propose a slight amendment to the wording of subsection 2. It will be noticed in lines four and five "unless the competing carriers by rail join in making it.", whch suggests that there must be an agreement between the two railways; but it has been drawn to my attention that there might be cases in which one of the railways may have no objection to the agreed charge but may not wish to join in making it. I would ask Mr. Langlois to propose that the subsection be amended by saying after the words "by rail" in line 14 "consent thereto in writing" and then it would continue "and/or join in making it".

Mr. LANGLOIS: I so move, Mr. Chairman, seconded by Mr. Cavers.

Mr. GREEN: Would that mean that the charge would be applicable to the second railway and would be in effect on the second railway?

Hon. Mr. MARLER: What it means at the moment is that unless both railways are agreeable to making the agreed charge and join in making it there could not be an agreed charge. But cases may occur in which one of the railways makes the agreed charge, but the other railway does not wish to join in it but has no objection to the other railway making it, and it seems to me it is a reasonable suggestion and therefore I would like to suggest that we say "unless the competing carriers by rail consent thereto in writing or join in making it."

Mr. GREEN: I was thinking of the shippers. It is my understanding of a similar provision in the present Act that the agreed charge must be available to a shipper on the C.N.R. just as to a shipper on the C.P.R. between the same points. That would be so under this subsection 2 as it appears in the bill.

Hon. Mr. MARLER: Yes.

Mr. GREEN: But if you make it merely a question of the second railway consenting to the agreed charge, will that still mean that it is in force as against that second railway?

Hon. Mr. MARLER: I do not think it would be in force against the second railway which consented but did not become a party to the charge. But I cannot believe if there was traffic involved that it would not wish to become a party to it.

Mr. GREEN: I think this change from a first consideration is to the benefit of the railway but not to the benefit of the shipper. In other words, a man may have his agreement with the C.P.R. and if he wanted to ship by the C.N.R., the C.N.R. would have to give him that reduced rate as the law stands now. But if you put in the amendment they would not have to do it. Is that right?

Hon. Mr. MARLER: As I understand it, for example, the C.N.R. makes the agreed charge, but the C.P.R. consents to it and does not join in making it

and that would mean that any other shipper could have the advantage of the agreed charge and force the C.N.R. to carry his goods under the terms of the agreed charge, but could not force the C.P.R. to carry them because the C.P.R. had merely consented and had not joined in making it. I find it difficult to believe, except in rather unusual circumstances, both railways would not wish to join all occasions because we are dealing with traffic for transport from or to a competitive point or between competitive points, so I do not think there is much doubt that it is rather an exceptional case. I will not insist on it too strongly.

Mr. GREEN: Take the case from Toronto to Montreal. That I suppose is where a lot of agreed charges would be in force. Under the present law an agreed charge between Toronto and Montreal has to apply to both railways.

Hon. Mr. MARLER: Yes.

Mr. GREEN: So that the shipper can ship either by C.P.R. or C.N.R.; in other words, he has a choice. Yet if this amendment goes through he has not got the choice. If the C.P.R. makes the agreed charge then the shipper can only ship by C.P. and not by C.N. as I read the amendment. This of course is a substantial change in the law.

Mr. CAMERON (*Nanaimo*): It does not have to be between competitive points.

Hon. Mr. MARLER: From or to?

Mr. CAMERON (*Nanaimo*): I was wondering about that particular situation. Suppose the C.N.R. agreed on a charge from Vancouver to Saskatoon and the C.P.R. did not come into it and then someone wanting to ship to Regina would in effect be discriminated against, would he not?

Hon. Mr. MARLER: I am afraid I just do not grasp the hypothesis.

Mr. CAMERON (*Nanaimo*): What I mean is there you have comparable runs out of Vancouver to the prairies but not to the same points.

Hon. Mr. MARLER: I do not think that would apply to what we are talking about. I think, for example, if C.P. said they would like to set up an agreed charge for a shipper beween Vancouver and say Calgary, the other railway might say we do not carry that particular kind of business and we are not interested in making the agreed charge. As it is now the agreed charge could not be made unless both railways agreed to it and unless they both join it. Under the amendment I have just suggested even though the other railway concerned did not make the charge, it would be possible for the other railway to make an agreed charge.

Mr. GREEN: Take for instance, from Oshawa to Vancouver. Suppose the C.P.R. makes an agreed charge with General Motors. Under the law, as it stands at the present time, that agreed charge also applies to the C.N.R. and an automobile dealer in Vancouver can get his cars either by C.N. or C.P.

Hon. Mr. MARLER: Only if both railways agree.

Mr. GREEN: But they had to agree in order to get an agreed charge in the first place.

Hon. Mr. MARLER: Yes. Now, they still have to agree but do not each have to accept the agreed charge.

Mr. GREEN: The only man who losses out on that amendment is the shipper.

Hon. Mr. MARLER: No. He ships by the one who puts in the agreed charge.

Mr. GREEN: He cannot have the goods shipped by the C.N.R.

Hon. Mr. MARLER: He can have his goods carried by the carrier which makes the agreed charge, whoever makes it.

Mr. CAVERS: He only has an agreement with one railway company so they must take his goods. The one who does not enter into the agreement could not carry his goods.

Hon. Mr. MARLER: That is right.

Mr. CARRICK: Subsection (2) speaks about transport on the lines of two or more carriers. Does that not mean that that subsection only has relation to an agreed charge where you are carrying on two lines? It would not apply to the case Mr. Green mentioned between Toronto and Montreal because there we can carry only one line, only Canadian National or Canadian Pacific. It is only where you have one line extending into another line that subsection (2) has any application.

Hon. Mr. MARLER: I do not think that is right.

Mr. GREEN: As I read the section originally in the bill it is meant to cover the case where there is a C.P. line and C.N line between the two points. Calgary or Edmonton or Toronto, Montreal or Vancouver.

Hon. Mr. MARLER: Where both railways serve the same points.

Mr. GREEN: Yes.

Hon. Mr. MARLER: I think that is right.

Mr. GREEN: The shipper, once he has negotiated the agreed charge has the advantage of shipping by either line of railway.

Hon. Mr. MARLER: Because he has made an agreement with both of them. But if one of them had refused to agree because it just did not suit its particular business then there would not be any agreed charge at all; whereas under the amendment I have just suggested, if the one railway was willing and the other merely consented and said it was not going to make an agreed charge then an agreed charge would come into being with one of the two railways.

Mr. GREEN: If you are going to change the basis to that extent why change the wording at all?

Hon. Mr. MARLER: It is not intended they should be competitive between the two railways themselves. It is where they both agree but one does not wish to make an agreed charge.

Mr. HAHN: It might be that it would not work at some points in some lines because the distance of one rail would make it unsound in an economic sense.

Hon. Mr. MARLER: It might be.

Mr. HAHN: And that would be a good reason for the amendment.

Hon. Mr. MARLER: I think it makes it wider and more effective.

The CHAIRMAN: Shall the amendment carry?

Carried.

Shall the subsection as amended carry?

Carried.

Subsection (3) of section 32.

Mr. GREEN: Could we have an explanation of this subsection and of subsection (4) because they can be considered together. This is a provision extending the agreed charge to cover traffic through the United States. Does that mean that the Canadian Trucking Industry is being made subject to competition under agreed charges by railway traffic going through the United States? These two sections mean competition by freight coming largely through American territory. Could we have an explanation?

Hon. Mr. MARLER: I think the route followed by the freight is a fact we have got to admit and as I understand it it has per se nothing to do with

agreed charges. I understand that at the present time some traffic, let us say moving between Toronto and Vancouver, will move in part over United States lines and some traffic will move entirely over Canadian lines. The effect of subsections (3) and (4) is with regard to what I may call the American railway, that means to say what is defined in the bill as a United States carrier, that is a railway company incorporated in the United States and owning, or operating on, railway lines in Canada. That qualifies them as being a United States carrier and I think if you read the provisions of the Act you will find that they deal with two points. The first is that the United States carrier can make an agreed charge to cover transport between points on its own lines in Canada served exclusively by it. I think that perhaps the case may be rather unlikely but at all events it does enable the American railroad to set up agreed charges between two points in Canada on its own lines served exclusively by it.

Mr. GREEN: I am not questioning that.

Hon. Mr. MARLER: The second point is this, that the United States carrier—let us consider the Great Northern Railroad—could make an agreed charge for the carriage of goods from Toronto to Vancouver—perhaps I should say "join in an agreed charge" made by the Canadian railroads, and provide for the transport of the goods over the lines which constitute the continuous route between the point of origin and the destination. I think that if you take the Great Northern, it would have to carry them over perhaps two or three railroads in the United States but these other railways would have to concur in the agreement—the other United States lines would have to concur in the agreement—before the Great Northern could effectively join in the agreed charge made by the Canadian railways. My understanding is that now an agreed charge is going to be the same for each one of the three railroads—the Canadian Pacific, the Canadian National and the Great Northern—but so far as the American carrier is concerned it is essential that it should have the concurrence of the other American lines over which it must pass to reach the point of destination.

Mr. GREEN: Why was it necessary to give this privilege to the American lines?

Hon. Mr. MARLER: Mr. Scott of my department informs me that the reason is that they do participate today in the general traffic movement and there is no intention to upset this situation.

Mr. GREEN: Do they have this power under the present Act?

Hon. Mr. MARLER: No, but of course they have the power under the normal tariffs to carry the traffic at the same rate as the other railroads.

Mr. CHAIRMAN: Subsection (4) carried.

Subsection 5.

Hon. Mr. MARLER: With regard to section 5 I am going to suggest that we arrive at a slightly revised wording. I would just like to draw the attention of Hon. Members to the fact that when this bill which is before you was drafted the Department of Justice tried to put into uniform language all of the provisions that are contained in it and use what might be described as their language—the language of parliament—in making this draft, though the ideas of the Royal Commission are I think embodied without any variation. In the interval since 6 o'clock I have gone over Judge Turgeon's draft and where he says: "carrier or carriers" we think that the word "carrier" is sufficient in view of the fact that "carrier" used in the singular does mean here "carriers" in the plural, and these were minor changes. The amendment which I will ask Mr. Langlois to propose is to replace subsection (5) by the following

text. It is just a matter of changing a few words and if anybody has a copy of Judge Turgeon's report he will see that this is almost identical with it.

> Where an agreement for an agreed charge is made by a carrier by rail any carrier by water which has established through routes and interchange arrangements with a carrier by rail shall be entitled to become a party to an agreement for an agreed charge and to participate in such agreed charge on a basis of differentials to be agreed upon in respect of the transport from or to a competitive point or between competitive points served by the carrier by water of goods with regard to which the carrier by water is required by this Act to file tariffs of tolls.

That, in effect, is Judge Turgeon's wording rather than the wording embodied in the bill.

Mr. Langlois: I so move, seconded by Mr. Lafontaine.

The CHAIRMAN: Is the amendment carried?

Carried.

The CHAIRMAN: Shall subsection (5) carry?

Carried.

The CHAIRMAN: Subsection (6)?

Carried.

The CHAIRMAN: Subsection (7)?

Mr. GREEN: Before you come to subsection (7), Mr. Chairman, I would like to move this subsection 6(a).

> Every agreed charge shall be compensatory, that is to say will be such as will improve the net revenue position of the carrier.

I believe that a provision of that type should be written into the law. There is a similar provision now in subsection (15) of the same section 32 and it reads as follows:

> On any application under this section the board shall have regard to all considerations that appear to it to be relevant and in particular to the effect that the making of the agreed charge or the fixing of a charge is likely to have or has had on . . . the net revenue of the carrier.

That means that under the present law the railway must show before getting an agreed charge accepted by the board that it is compensatory, or in other words that the goods will not be carried at a loss under the agreed charge. Under the new section 32 there is no such provision. The representatives of the railway companies said that they were not going to carry any goods at a loss anyway, and therefore we should not write into the bill that they must not do so. I asked one of these representatives—I forget which of them—who was going to make up the money that was dropped by reason of making an agreed charge, and he said "oh well through these agreed charges we are going to make a lot more money than we did before" which I doubt very much. However, it has a very practical significance in respect of the trade between the two coasts of Canada. The committee was given evidence yesterday and it has been given evidence today to the effect that there was a shipping service established between the two coasts—by carrying goods by ship they could be landed in Vancouver cheaper than they could be carried by rail. The railways lowered their rates until they ran those shipping

companies out of business. When they were out of business the railways put their rates up again. We have evidence that it was done in respect to some commodities by means of agreed charges.

Hon. Mr. MARLER: I wonder if I might interrupt. During the interval after 6 o'clock I made inquiries and I was told that no agreed charge for the carriage of any transcontinental traffic had been made effective before 1954. That it seems to me disposes of the idea that the Munson-Clarke situation was caused by agreed charges.

Mr. GREEN: In any event we have actually had that situation arise on the west coast and we are very much concerned about the railways being able to prevent the establishment of inter-coastal service through the Panama Canal. The railways are very determined that there shall be no such service. But we on the coast believe that we are entitled to the full benefit of water competition. If the railways are going to put in agreed charges which are compensatory, that is, if they do not carry their goods at a loss, then no one can complain about such agreed charges. But on the other hand if they are going to put in agreed charges which are at a loss, then they should not be allowed to do that in order to knock out competition by water.

We now have a shipping service between the two coasts carried on by Saguenay Terminals, and I hope there will be more than one service of that kind. I believe it is only fair that there should be this provision written into the law so that in effect the section will only contain a provision similar to the provision which is already in under subsection 15 (*a*). An amendment of the type I have suggested, or proposed in a little different wording would meet that situation. It would require the railways to keep their agreed charges to a basis where they are compensatory. That would be the sole effect of it.

Hon. Mr. MARLER: Mr. Chairman, I think one point that Mr. Green is overlooking is that the whole structure of railway rates provides for a competitive tariff in just the very circumstances to which he has referred. It has not been agreed charges which have enabled the railroads to compete with shipping between the east coast and the west coast. It is competitive rates and I think that Mr. Green will remember that you cannot have a competitive rate under the Railway Act unless there was this very competition of which he speaks, that is to say, shipping services between the east coast and the west coast.

If there is no competitive mode of transportation between Montreal and Vancouver, then there is no competitive rate. That is the essential part, that there should be competition.

What are the facts about competition as between water and rail, and between eastern Canada and western Canada? Surely everybody must admit that a ship can carry bulk cargoes much more cheaply than the railways can. I suppose there is a point in the Great Lakes—I do not know just how far East you would have to go—where it is cheaper to ship by water all the way around the Panama Canal to the west coast than it is to ship by rail. The competition comes not necessarily on the coast, but it comes all the time. The ship cannot get there as fast as the train can; and those who are in a hurry, I take it, ship by rail, while those who are not in a hurry can sit around and wait while they ship by sea. That is the kind of competition, and I do not believe that shipping services can expect to put the rails out of business, because time is a factor as against ships. And I do not believe that the rails can put the ships out of business for the simple reason that they are not competing for the same kind of business.

The rails are carrying goods which have to get there quickly, while the ships are carrying goods which get there in not so short a time, but there can be no possible basis of competition between the two, because time is of the essence. No one can suggest that a ship can get there as fast as the train.

Coming back now to Mr. Green's amendment, the thing which bothers me about it is that first of all we have no definition of compensatory and also we have no way under Mr. Green's amendment of making it stick. There is no machinery at all. We say merely in the bill that an agreed charge must be compensatory. But how are we going to enforce that provision? Have we got to go and test out every agreed charge that has been made before the Board of Transport Commissioners so that we can find out whether it is compensatory or not? In other words, are we, by this simple amendment which Mr. Green proposes, going to put ourselves in a position where, for example, agreed charges will have to be referred to the Board of Transport Commissioners to find out if they are really compensatory?

In point of fact I would like Mr. Green to compare his amendment with the clause which we have already in the present sub-section (15) under which the Board is directed to have regard to its examination of an agreed charge to all relevant considerations. One of the things which the board must look into is the effect on the net revenue of the carrier. Everybody knows what that means. I do not want to start off by putting in this bill a new definition, but quite apart from that I do not want to have the agreed charges ham-strung by some other process in place of the one we have at the present time, and which we are abandoning.

Let us look at the thing from a practical point of view, not just pure theory of whether we should have it in section 32 or section 33.

Mr. GREEN: It is not pure theory when a shipping company is put out of business.

Hon. Mr. MARLER: Let us talk about shipping companies being put out of business. What have they got at Vancouver? Have they got a wharf there? Of course not. Have they lost their ship? No. They just discontinued the service. They did not lose their shirts over it. They still have their ship left.

Mr. GREEN: I am not worrying about the shipping company. I am worrying about the people who lost the cheap rates.

Hon. Mr. MARLER: Rates are not made by statute with one or two exceptions. So far as Mr. Green's amendment is concerned, what he is creating in effect is a new measure, and I fear that at the same time he is creating the sort of difficulty which has beset agreed charges under the present legislation, a thing which I am most anxious to get away from. Are we opening the door wide to the railway companies to make agreed charges which are non-compensatory? I think not. Because section 33 provides for a complaint to the board, or a reference to the board, and one of the very first things which the board must look at when an agreed charge is referred to it is the effect that the making of the agreed charge has had or is likely to have on the net revenue of the carriers who are parties to it.

Now, with that very clear warning before them how can anyone expect that the railroad companies are going to make non-compensatory charges which may be set aside three months afterwards? That is the reason I used the word "theory". I hope I did not offend you, Mr. Green, in saying "theory" but I think it is a theoretical consideration. I think that this provision of section 33 which says to the board "You must look at this," when an agreed charge is referred to it—I think that tells everybody that the agreed charge has to be compensatory and who should know it better than the railways?

Mr. HOSKING: Mr. Minister, have you any control over the shipping? Could this thing not act in reverse? Should the ships decide to hurt the railways by running a cheap service could they do so?

Hon. Mr. MARLER: I think so—this shipping between the east coast and the west coast is unregulated and there is nothing to stop a shipper with sufficient money to carry goods for little or no charge but I do not think anyone will.

Mr. GREEN: Mr. Hosking on more than one occasion has expressed great concern for the consumer, and now he has reversed his position.

Mr. HOSKING: I simply asked a question.

Mr. GREEN: If the consumer on the west coast could get his freight carried by ship for nothing, would you have any objection?

Mr. HOSKING: No.

Mr. GREEN: Then what are you squawking about?

Mr. HOSKING: As long as the taxpayers do not have to pay for it, I will not squawk.

Mr. GREEN: The minister said the time element is all that governs this. That is completely wrong. Where people have to get their goods out in a hurry the railway gets all the business. There is no competition between shipping lines and the railway where time is of the essence—

Hon. Mr. MARLER: That is right.

Mr. GREEN: —but the difficulty comes with the other case where time is not important and the ships can undercut the railway. That was the position before when we had another shipping line and then he has said if a provision of this kind is written into section 32 it would mean that the Board of Transport Commissioners would have to decide the application for an agreed charge before it went into effect—

Hon. Mr. MARLER: No, I did not say that.

Mr. GREEN: You said it would hamper the going into effect of an agreed charge.

Hon. Mr. MARLER: I did say that, yes.

Mr. GREEN: We should read the present subsection (6) which says:

> (6) An agreed charge shall be made on the established basis of rate making and shall be expressed in cents per hundred pounds or such other unit of weight or measurement as is appropriate; and the car-load rate for one car shall not exceed the car-load rate for any greater number of cars.

There is a provision of the type I have in mind. Subsection (6) sets out certain things that the railways must do and I merely add a subsection 6(*a*) which says in effect that the railways must not make an agreed charge which means that they are carrying these goods at a loss. It is the same type of governing provision as you will find in subsection (6) as the bill now stands.

Mr. CARRICK: Could I ask the minister a question? Would you mind turning to page 19 of the Turgeon report, sir. In the last three paragraphs of that page Mr. O'Donnell referred to what Mr. Justice Turgeon said were the three types of rates, the highest, the lowest and the medium type. He says in part:

> On a cost basis there may be said to be three rates applicable to any shipment. The first, and highest, is a rate which would return to the railways the direct or 'out of pocket' cost of providing the service plus an equitable share of the overhead costs which the railway must necessarily incur, but which are not specifically identified with any particular traffic.

And then later he says:

> The second, and towest, rate would be one which would return to the railway only the direct cost of providing the service, in other words the out of pocket cost.

And then he says in describing something between these two extremes:

> Between these two extremes there lies a wide margin within which will be found what I may call the third rate, that is, one which covers the out of pocket costs and in addition makes varying contributions although less than in the case of the first and highest rate, towards the overhead expenses of the railway. It is within this margin that the majority of railway rates fall.

In order to avoid ambiguity in the suggestion of Mr. Green, if anything were to go in would it be possible to define compensatory rate as one which will at least cover the direct cost of providing the service? If you wanted to adopt Mr. Green's suggestion could you not define compensatory cost as at least the direct cost of providing the service?

Hon. Mr. MARLER: Well, Mr. Carrick, I do not want to get away from the language that has been in the bill since 1938. I do not want to introduce a new theory of determining whether or not a charge is compensatory. If there was a practical way of relating what Mr. Green has to say to the expression which is in the law at the present time, namely where we talk about the effect that the agreed charge is to have on the net revenue of the carrier, well I would go along with that, because we already have that language but I do not see any practical way of bringing that into clause 32 at this particular stage and I would have to say to Mr. Green for the moment that I am opposed to this amendment which he suggests, but I shall be very glad between the time the committee reports and the time the bill is considered again in the House to see whether what he has in mind can be taken care of in some other way, but I do not think I can accept that.

Mr. HAHN: Mr. Chairman, the minister did ask earlier in questioning the compensatory rates if we are going to have to set up machinery to find out if agreed charges are compensatory.

Hon. Mr. MARLER: That is right, yes.

Mr. HAHN: How do you arrive at the fact that earlier in this discussion we discussed the fact that all agreed charges would be compensatory and the railways know they are before they put them in?

Hon. Mr. MARLER: Mr. Hahn, what I find difficult to reconcile is that it is in the obvious interest of the railways to make an agreed charge that is going to add something to the net revenue. We heard evidence last night, and I do believe that the motive that directs all of us in our business activities is to so arrange our operations that when they are completed we shall have a profit. I do not believe that the railways have anything else in mind. I am prepared to say, as I said earlier, that I feel perfectly sure we will find that these agreed charges will be compensatory. In fact, the study of the way bills made by the Board of Transport Commissioners in 1949, 1951, 1952 and 1953 showed that the agreed charges brought in a very good return per ton mile. I think that will be the same thing under the new Act, but the point I would like to emphasize to Mr. Hahn is that where there is reason to believe there is something wrong with an agreed charge we have the shippers to worry about it, and other carriers to worry about it, and the general body of the public which may say to the government, "This thing is wrong." I think if there are enough people to say that that inevitably the government would

decide that the charge should be referred to the Board of Transport Commissioners and then the first thing they must do is to determine the effect of that agreed charge on the net revenue of the carriers who made it.

I think we are going far enough but I hope to try and satisfy Mr. Green by saying that while I cannot accept the amendment he has proposed now because of the way it is conceived, between now and the time we consider the bill in the committee of the whole in the House, I will be glad to re-examine the question and see whether there is anything I can do to try and meet his point more fully than I have been able to up to the present.

Mr. GREEN: I do suggest, Mr. Minister, that we must keep in mind that the railways have outlined one of their objectives in the adoption of the agreed charges is to get at their competitors. That is the main reason they are interested in them. They are not interested in agreed charges as a means of making more money. They are interested in them as a means of attacking their competitors. Mr. O'Brien put that very clearly when he said that the agreed charge puts an end to the rate-cutting war.

Hon. Mr. MARLER: Because they get the business as a result of having the agreed charges. It is not a case of putting their competitor to death.

Mr. GREEN: They want the agreed charges to be able to stop rate-cutting wars. I do not think we should be naive enough to think that is not their main objective in getting these agreed charges. That we should bear in mind at all times. It is not just a question of having an agreed charge so they can make more money. They want the agreed charges to be able to deal roughly with their competitors. I am not quarreling with their attitude. Each one of us if we were managing a railway would probably want to have the same power.

Mr. HOSKING: They said they put up the umbrella and as soon as they did their competitors cut below them. With this agreed charge when they put the umbrella up they would sign these people up and they could not just undercut.

Mr. GREEN: That shows that the railways want the agreed charge to stop the rate cutting by truckers.

Hon. Mr. MARLER: They want to sew up the business.

Mr. HAHN: The same as any other merchant wants to sew up the business of any community and he does not care what means he uses.

The CHAIRMAN: Shall subsection (6) carry?

The CLERK: The amendment by Mr. Green is that there be added in line 20 on page 2 after subsection 6 the following 6 (a):

> Every agreed charge shall be compensatory that is to say such as will improve the net revenue position of the carrier.

The CHAIRMAN: All those in favour of the amendment?

Mr. CAMERON (*Nanaimo*): Before we decide on the amendment may I ask a question of Mr. Green? To whom, Mr. Green, would you consider the Board of Transport Commissioners should apply to get the figures to prove or disapprove whether or not a certain rate was compensatory?

Mr. GREEN: There is no one to whom you could apply and there is no one to whom you could apply under subsection (6). This provision I am moving is of the same nature as the present subsection (6). In other words, that the rate must not be one which means a net loss.

Mr. CAMERON: (*Nanaimo*): You have to accept the railway company's figures for that.

Hon. Mr. MARLER: The fact is when you say the agreed charge shall be made on the established basis of rate making and shall be expressed in cents

per hundred pounds, I do not think those words lend themselves to much difficulty. When we say the carload rate for one car shall not exceed the carload rate for any greater number of cars, those are not a question of shades between black and white; it is either one thing or another. What I am afraid of in Mr. Green's amendment is that we are getting back to ham strings which I do not like.

The CHAIRMAN: All those in favour of Mr. Green's amendment?

The amendment is defeated on division.

Shall subsection (6) carry?

Carried.

Shall subsection (7) carry?

Carried.

Shall subsection (8) carry?

Carried.

Shall subsection (9) carry?

Carried.

Shall subsection (10) carry?

Carried.

Shall subsection (11) carry?

Carried.

Shall subsection (12) carry?

Carried.

Hon. Mr. MARLER: Mr. Chairman, if the committee would permit me, I would like to try to meet the point which was brought up by Mr. Hamilton at the close of the afternoon meeting with respect to the business of making charges which extend beyond what he described as the continental limits of North America and Newfoundland. I was rather surprised to notice that he did not seem to think that Newfoundland formed part of continental North America. I wondered what the Newfoundlanders might think.

Mr. HAMILTON (*Notre-Dame-de-Grace*): If the minister will read the evidence he will find that I first referred to continental North America and he asked if that would mean Newfoundland

Hon. Mr. MARLER: He said the continental limits of North America and Newfoundland which clearly suggested that Newfoundland was not within the continental limits of North America. I thought we should provide something which would possibly be less open to objection for Newfoundland and which might present less difficulty.

Could I ask Mr. Cavers if he would move the amendment that we add, after the word "transport" in lines 2 and 3 of subsection (1) the words: "from one point in Canada to another point in Canada." That makes it perfectly clear that it does not make any difference by what method you carry the goods but that the transport is between one point in Canada to another in Canada. In other words, it is not from one point in Canada to a point in the United Kingdom or the West Indies or somewhere else.

Mr. CAVERS: Mr. Chairman, I move that the following words be inserted after the word "transport" in lines 2 and 3 of subsection (1) of section 32 "from one point in Canada to another point in Canada" then "of goods of a shipper as are agreed between the carrier and the shipper."

The CHAIRMAN: Shall the amendment carry?

Carried.

Mr. HANSELL: Before we get on with section 33 as I said this afternoon I am not going to make any extended arguments on this but as I said before I think those who represented these various ocean shipping companies did a good job. I think they made the case and I do not think we should overlook their suggested amendment.

Hon. Mr. MARLER: I do not know if you realize by the amendment we just carried that subsection (1) completely covers the case you are talking about.

Mr. HANSELL: Does it, Mr. Minister? Let me ask this question. This amendment suggests that if there is discrimination that the Transport Board may disallow the agreed charge. Now is that applied in your amendment?

Hon. Mr. MARLER: I think it is implied in section 33 but not in the one I have just covered. The one I have just proposed I think takes care of the backbone of the contention which we listened to for most of the day. That was that the railroads might by a clause in their agreed charges direct business specifically to Conference carriers and so exclude non-conference carriers. I will admit perhaps this subtle difference that whereas the amendment which you have in your hand refers to points as to which in part II of the Transport Act is not in effect, I do not think anybody will contend we are terribly concerned with a problem of transport to the east of the Island of Orleans.

Mr. HANSELL: I have just one question here to clear up this doubt in my mind. I will give a hypothetical case. Supposing the railway should strike a contract or an agreement for an agreed charge and write into that contract that the shippers must ship by a Conference shipping company and not mention anything about rates, could that be done?

Hon. Mr. MARLER: I do not think so, Mr. Hansell, because I understand what an agreed charge means under subsection (1) as just amended, is that an agreed charge is only for the transport of goods between two points in Canada. You cannot make an agreed charge between, let us say, Winnipeg and London, England, or Liverpool.

Mr. HANSELL: But could they write into their contract the necessity of the shipper having to ship the rest of the way overseas through or by a Conference shipping company? That is the thing; it is not a matter of the agreed charge. It is a matter of channeling the business to one of the Conference companies and this is eliminating the competition from other shipping companies.

Hon. Mr. MARLER: Well, Mr. Hansell, let me perhaps pass from the narrow ground which you are on to the broader ground of all discriminatory conditions which might be imposed in an agreed charge. I think that that properly falls under clause 33 and to the extent that an association of shippers or a carrier is not able to complain under subsection (1) then there is power given to the Governor in Council under subsection (2) to refer the charge to the board for investigation.

Mr. GREEN: I take it that the amendment to subsection (1) section 32 deals with the case of an agreed charge which ties up shipping in Canada to the United Kingdom by a certain line. What about a line which goes to Newfoundland? That would of course be within Canada. Would it not be possible for the railway to stipulate in the agreed charge that the traffic by ship to Newfoundland had to go by a certain line?

Hon. Mr. MARLER: I think I should say that I do not believe that the definition of the agreed charge would exclude that possibility and that is

the reason why I said a moment ago in reply to Mr. Hansell that I did not want to consider just the narrow ground he was going on but also to include the case you have given. I do not believe personally that agreed charges should be used for any other purpose than to provide for the transport of goods between one point in Canada and another, and I do not believe that there should be on the part of a railway carrier provisions by which somebody would be unjustly penalized as a result of it. I am not going to pass judgment on that but when cases of discrimination of that kind are referred to the government I feel perfectly certain that if there is a *prima facie* case and if it is shown that a discriminatory practice has grown up in that way the Governor in Council will refer it to the board for investigation, and as Mr. Green knows in those circumstances the board will have the power to vary or cancel the agreed charge.

Mr. HANSELL: Do you feel that this amendment takes care of the amendment put forward by the Saguenay Shipping Company?

Hon. Mr. MARLER: It is not in the same terms, exactly, but I think it is as good a remedy.

Mr. HANSELL: You would say that these other shipping companies would have a right to bid for the overseas business?

Hon. Mr. MARLER: Mr. Hansell, don't put in my mouth words that I would hesitate to pronounce. I imagine that the Conference has got along very well because they are very resourceful people and I would be the last to pretend that if we do one thing they may not do something else. I myself thought by confining agreed charges to Canadian points we were overcoming the principle and where you have what seem to be obviously discriminatory clauses in agreed charges which are brought to the attention of the Governor in Council the logical thing is that that would then be referred to the Board of Transport Commissioners for review.

Mr. LANGLOIS: I wish to move, seconded by Mr. Cavers that section 33 be deleted and replaced by the following:

> 33. (1) Where an agreed charge has been in effect for at least three months
>
> (*a*) any carrier, or association of carriers, by water or rail, or
>
> (*b*) any association or other body representative of the shippers of any locality
>
> may complain to the Minister that the agreed charge is unjustly discriminatory against a carrier or a shipper or places his business at an unfair disadvantage, and the Minister may, if he is satisfied that in the public interest the complaint should be investigated, refer the complaint to the Board for investigation.
>
> (2) The Governor in Council, if he has reason to believe that an agreed charge may be undesirable in the public interest, may refer the agreed charge to the Board for investigation.
>
> (3) In dealing with a reference under this section the Board shall have regard to all considerations that appear to it to be relevant, including the effect that the making of the agreed charges has had or is likely to have on the net revenue of the carriers who are parties to it, and in particular shall determine whether the agreed charge is undesirable in the public interest on the ground that it is unjustly discriminatory against any person complaining against it or places his business at an unfair disadvantage or on any other ground, and, if so directed by the Governor in Council in a reference under subsection (2), whether the

agreed charge is undesirable in the public interest on the ground that it places any other form of transportation services at an unfair disadvantage.

(4) If the Board, after a hearing, finds that the agreed charge is undesirable in the public interest on the ground that it is unjustly discriminatory against any person complaining against it or places his business or any other form of transportation services at an unfair disadvantage or on any other ground, the Board may make an order varying or cancelling the agreed charge or such other order as in the circumstances it considers proper.

(5) When under this section the Board varies or cancels an agreed charge, any charge fixed under subsection (10) of section 32 in favour of a shipper complaining of that agreed charge ceases to operate or is subject to such corresponding modifications as the Board determines.

The CHAIRMAN: Shall subsection (1) of section 33 carry as amended?

Mr. GREEN: I am going to move as a supplement that there should be added after the words "association of carriers by water or rail" the words "or any association of motor vehicle transport operators".

The minister in his closing remarks started out by saying that the trucking industry fills a very important role in Canadian transportation. He embellished those remarks to a degree. He is quite happy to have them doing carrying jobs to the railways.

Hon. Mr. MARLER: I did not say that, Mr. Green.

Mr. GREEN: You did not say that, but that is my comment on your remarks. The minister is not allowing them to complain, however. He stops at the point where they would be in a position to come in and make an objection. The trucking industry have not attacked the agreed charges as such in their brief. They have merely asked for the right to protest, the right to ask the minister to refer a matter to the Board of Transport Commissioners and that right the minister has refused to give them. The only extent to which he has gone is to put in the new subsection (2) which reads:

The Governor in Council—

That is the whole cabinet, not only the minister but the whole cabinet, and some of the members of the cabinet are a lot tougher to convince than the Minister of Transport.

Hon. Mr. MARLER: Don't go too far, Mr. Green, in that direction.

Mr. GREEN: If the cabinet have reason to believe that an agreed charge may be undesirable in the public interest they may refer the agreed charge to the board for investigation.

That is the only possible way in which the trucking industry can have a complaint heard. They have got to convince the cabinet that there must be a reference to the Board of Transport Commissioners. I believe that in actual practice that is almost impossible. It is extremely unlikely that that provision will be of any practical use whatever.

Hon. Mr. MARLER: Of course, we can take it out, Mr. Green, if the truckers do not want it.

Mr. GREEN: I am simply giving my own views on this question. It may help but it certainly does not go very far. What is the actual picture in Canada today? There is no national transportation policy. You have the railways under the direction of the Dominion Government; you have some of the shipping—the shipping is under the direction of the Dominion Government until it gets as far as the Isle of Orleans—

Hon. Mr. MARLER: Are you suggesting it should be regulated, Mr. Green?

Mr. GREEN: I am simply saying it is not under the Board of Transport Commissioners, and it is not under the board either in the Maritimes or on the west coast. The air traffic is not under the Board of Transport Commissioners, it is under the Air Transport Board which is not a board at all but a branch of the government.

Hon. Mr. MARLER: Nonsense.

Mr. GREEN: Well, it is not a judicial body like the Board of Transport Commissioners. It is entirely different; it simply reports to the minister and has no judicial functions. Pipe lines to a degree are under the Board of Transport Commissioners. The motor carriers—and all of those are in the transportation picture—are under the provincial governments—

Hon. Mr. MARLER: Are you suggesting they should be under the federal government?

Mr. GREEN: Wait a minute and you will see what I am suggesting.

Hon. Mr. MARLER: I am waiting impatiently.

Mr. GREEN: Well, don't be so impatient. The Dominion Government, by a decision of the privy council, actually got the power to regulate motor traffic going across the provincial boundaries, but the Dominion washed its hands of that power and turned it over to the provincial governments.

Here are the trucking people who are in competition with the railways, the ships, the air lines, and the pipe lines as well; they are in the transportation picture. It just so happens that they are under regulation by provincial boards and not by the Dominion; in so far as they cross provincial borders, so far as the trucking business is concerned. That fact is the fault of nobody but the Dominion government, because the Dominion government refused to accept the responsibility for their regulation.

The minister said today that all these trucking people are not under regulation. They are not regulated like the railways are. The actual fact is that in some of the provinces the truckers' rates are regulated; I know they are in my own province of British Columbia, and they are in Manitoba. We have evidence that they are in Quebec.

Mr. CARRICK: Not enforced, though.

Mr. GREEN: They are in part, and Mr. Shepard said here today that Manitoba felt that the truckers should have the right to appear before the Board of Transport Commissioners in just the same way that the railways have the right to appear before the Motor Carrier Board in Manitoba. In Manitoba, British Columbia, Ontario, and Quebec, it was proved last night, that the railways have the right to appear before this board in Quebec. I read part of the judgment by the Quebec court which held that the railways had the right to appear before that board.

Surely it would have been a fair thing for the Dominion government to give the trucking industry the same right to appear before the Board of Transport Commissioners. There is no reason why they should be just shut out. The railways have got a similar right in some of the larger provinces of Canada, and I have no doubt actually that they will have that same right in the other provinces; yet the Dominion government says "We refuse to recognize you as truckers, and we will not make any provision for you to appear and even make protest against your competitor, when your competitor is breaking the law.

I do suggest that that is unfair and I think that the trucking industry should be named along with these other groups as having the right to complain to the minister and ask him to allow them to appear before the Board of Transport Commissioners.

The minister went on to say this afternoon that "Why, you would have all the individual truckers in the country bothering me."

Hon. Mr. MARLER: I did not say that. I read the truckers brief and I will read it again in a minute.

Mr. GREEN: Well that is what was meant, that every little trucker could write in and complain and expect the minister to deal with it. The minister has taken on himself in this section the burden of dealing with complaints that are made. I do not see why he does that. It seems to me that these complaints should go directly to the Board of Transport Commissioners. However, I get away from the possibility of the individual trucker complaining because, in my amendment, I use the words "association of motor vehicle transport operators." That means that it would have to be a responsible group of motor vehicle transport operators, and I do suggest that they should at least have the right to make their complaints.

We have had the whole story today, and you are just as familiar with it as I am myself. But sooner or later this country has got to get on a basis where there is a national transportation policy; and the reason we are in this mess today is because there has not been worked out a composite policy which brings all these different groups in the transportation business under one type of regulation.

As long as we try to carry on and mix up the control of transportation, we are going to have trouble of this kind, and while we do have that trouble, surely the Dominion should take the same position that the provinces of British Columbia, Manitoba, Ontario and Quebec have taken—and I think Saskatchewan, namely that they should let the railway people come in and complain. Why not let the Dominion approach the thing in the same broad-minded way and provide that the truckers can come in and complain before the minister and eventually get their complaint before the Board of Transport Commissioners?

Hon. Mr. MARLER: Mr. Chairman, Mr. Green has certainly traversed a very broad field and I can say to the members of the committee that I have no intention of covering all the very interesting activies which he has mentioned such as the air transport board, and the Board of Transport Commissioners. Mr. Green apparently would like to regulate shipping east of the island of Orleans and on the coast and off the coast. All I can say on that point is that there is a royal commission which is studying the whole question of coastal shipping. I hope that he will not fail to address his representations to that royal commission. I know he has been interested in the subject for a long time and I hope that with the vigor which he customarily deploys, that he will be able to represent to the royal commission on coastal shipping the advantages of regulation of other ships which are not now regulated under the Transport Act.

He also spoke about the Motor Vehicle Transport Act, and I thought I detected a slight note of criticism in the fact that the federal government had authorized or had adopted legislation which permitted the provincial boards to regulate interprovincial highway traffic. Yet I feel perfectly sure that had the federal government insisted upon exercising its constitutional power in setting up a federal regulatory board on trucking that we would have heard Mr. Green complaining that we were not respecting the rights of the provinces. Having been in opposition myself I know how easy it is to turn the medal over and find something else on the other side.

Mr. GREEN: That is our job!

Hon. Mr. MARLER: I have turned one over similar to that and I have examined both sides of a good many medals. The effect of what Mr. Green says is that the truckers are regulated, and he has referred to the fact that in Quebec there is a judgment which says that the railways may appear upon the application of truckers for a licence from the provincial transport board. But

what are those licenses for? They are licenses to operate between point A and point B within the province; and the question is not one of rates. It is a question of public convenience and necessity. I take it that any citizen by the same process may appear to show reasons for or against the public convenience and necessity of any service which was proposed to be instituted, in taking up other services by horse, automobile, or any other form of transportation regulated by the provincial board. There is no question of rates brought up. There is no suggestion in the judgment which Mr. Green has before him that the board says that the railways could appear and complain that the rates of the truckers were too high or too low.

Mr. GREEN:-That can be done in Manitoba.

Hon. Mr. MARLER: Maybe they can, yes, but I would like to know just how fully the provincial bodies are enforcing the rates in the interprovincial field which is the field covered by these agreed charges. I am not going to speak about the other provinces because I do not know anything about them, but I do know that Quebec does not even invoke the Motor Vehicles Transport Act in order to regulate interprovincial truckers. So there is no regulation in Quebec so far as rates are concerned or so far as inter-provincial traffic is concerned other than by it being said by provincial authorities that they are going to regulate it anyway, but they are not making use of the statute and there is no local regulation of trucking rates in the province of Quebec and we have already heard that there is none in Alberta. The situation in Ontario seems to be, if I may quote the words used by Mr. Green, "In a matter of time there will probably be regulation." Those were pretty much the words used back in 1938—Ontario was just about to introduce control of highway traffic in 1938. It is still just about to do it some 17 or 18 years later. What Mr. Green is suggesting by this amendment is that unregulated carriers —unregulated in the broad sense; they are certainly not regulated under the Transport Act—should have the right to come along and object to the rates which the railway proposes to charge under agreed charges. What is going to be the nature of their complaint? Well, we heard Mr. Magee and he said in effect the complaints will probably be two. Perhaps there will be a third which I will mention in a minute. First, the agreed charge ties up too much business and the second I suppose will be that the rates are too low. Certainly they are not going to complain that the rates are too high. I think we must assume that the truckers will complain that the rates are too low. What Mr. Green is suggesting now is that unregulated carriers against whom the agreed charge is an instrument of competition are to have the right to complain that the agreed charge is too low or that it gives too much of the shippers' business to the railroad though the shipper himself has agreed to the agreement. He was not forced to sign it; he acceded to it voluntarily, and said, "Yes, I will give you 55 per cent, 75 per cent, 85 per cent or 100 per cent of my business moving between the two points covered by the agreed charge." I cannot see why the truckers should have the right to object to the charges which their competitor proposes to make when we know full well that the railroads do not have an opportunity and do not even have the right to complain when the trucker makes a deal with some shipper who is a client of his. I cannot accept the amendment which Mr. Green has proposed. I think I have gone a long way particularly in the face of the written representation of the Canadian Trucking Associations. What do they say? "One may say, the Minister of Transport is a busy man and the Canadian Trucking Association represents 7,000 truck operators. Every time an operator is hurt by an agreed charge he will want to appeal to the minister." I do not say that—it is the Canadian Trucking Association who say that.

Mr. GREEN: You read it with great disapproval and the amendment does not cover the individual truck operators.

Hon. Mr. MARLER: No, and you emphasized afterwards that it was the association; but this, Mr. Chairman, I think, gives us a very good clue as to how Mr. Green's amendment is likely to operate. Let us be practical about it. Ten provincial associations—and there are 10—and one national association are in operation. Let us suppose someone complains to a provincial association. What is the president going to do when he receives the complaint? Is he going to say, "I do not think we will send it." No, he will say, "This fellow is a good member of the association, of course we will send it on. He is one of the charter members; we cannot refuse to send it on. Let us send it on to the minister." I will say to you that I am prepared to look at the complaints which relate to general matters but I do not think that either the minister or the Governor in Council or the Board of Transport Commissioners should be asked to hear a trucker every time he is going to say that unfortunately such and such an agreed charge that has just been put into effect has taken some of his business away from him.

Now, whether we wrap it up and call it an association of truckers or leave it to an individual trucker I do not think the practical effect is different. Mr. Chairman, I think that I went about as far as it is reasonable to go when I asked Mr. Langlois to propose this amendment which contains subsection 2 which gives the Governor in Council the power to refer it to the Board for investigation at any time he has reason to believe an agreed charge may be undesirable in the public interest. Well now, what is the difference between what Mr. Green suggests and what I suggest? In the one case if the association appeals to the minister and the minister says "No", that is final, but I am not asking that the minister should have that whole responsibility in those cases. I say that those cases should be dealt with by the Governor in Council. He does not have to rely only on the minister, he can rely on the whole Governor in Council. I think, Mr. Chairman, that subsection 2 contains a very broad safeguard not only for the individual trucker and for the association of which Mr. Green has spoken but for anybody who may be affected by discriminatory provisions in agreed charges or other things that are contrary to the public interest. It seems to me it is just about as broad as it is reasonable to make it.

I do not know whether there is any truth in it or not but I have been told that the Canadian Trucking Association which produced a 72-page brief yesterday on the subject of this bill appears to be quite pleased with this amendment, subsection (2), and if the members of the committee feel we are going too far I suppose Mr. Langlois could be persuaded to withdraw subsection (2) but I think personally that it provides a pretty fair measure of safeguards for all who are interested in or affected by agreed charges.

Mr. JOHNSTON (*Bow River*): Mr. Chairman, may I ask a question?

Hon. Mr. MARLER: We are glad to have you back, Mr. Johnston.

Mr. JOHNSTON (*Bow River*): I am sorry I was not here to follow all these arguments, but the minister was saying that the section went about as far as it could reasonably be expected to go. I think that was in effect what he said.

Hon. Mr. MARLER: Pretty much, yes.

Mr. JOHNSTON (*Bow River*): Is this broad enough to allow the truck operators to appear and present their cases before the board?

Hon. Mr. MARLER: No, definitely not.

Mr. JOHNSTON (*Bow River*): Is there any particular reason why they could not be when other operators are?

Some Hon. MEMBERS: Oh no!

An Hon. MEMBER: Not again.

Mr. CAVERS: We have been discussing that for the last hour!

Hon. Mr. MARLER: I think I can understand, Mr. Chairman, that the problem of electing Social Credit members in Alberta has so preoccupied the honourable member that he has not been here during the sittings—

Mr. JOHNSTON (*Bow River*): There could be nothing more important, I assure you.

Hon. Mr. MARLER: We have had two whole days of argument on this very topic and all I can say is that I suggest, Mr. Johnston, you should read the evidence of the committee. I have tried to say in the nicest way I could that I did not believe that the trucker could justifiably be allowed to complain against an agreed charge, and if he did not like that I was very much afraid he would have to put up with it. However, I did say this afternoon and I could perhaps repeat it for the benefit of latecomers and those preoccupied with Alberta affairs that subsection 2 is intended to cover cases where the use of agreed charges—and perhaps I should say the misuse of agreed charges—is such that the trucking industry between any two points in Canada is going to be threatened with extinction. In that event the Governor in Council without waiting three months or even three days if need be has the power to refer the agreed charges to the board for investigation and I take it that when the board holds hearings in that event they can hear everybody and anybody and then they can come to a decision as to whether the agreed charge should be varied or cancelled.

Mr. JOHNSTON (*Bow River*): On that occasion the truckers would be allowed to present their views?

Hon. Mr. MARLER: I would think the board would probably consider that the considerations they might have to set forth would be relevant particularly if Mr. Johnston would let me read the tail end of subsection 3:

> and, if so directed by the Governor in Council in a reference under subsection (2), whether the agreed charge is undesirable in the public interest on the ground that it places any other form of transportation services at an unfair disadvantage.

I think the board could hear the representations of those engaged in that other form of transportation.

Mr. HAMILTON (*Notre-Dame-de-Grace*): Mr. Chairman, there is one point here which I think might be mentioned. Before I do so I should say I certainly agree with the points raised by Mr. Green. I feel almost as if we are making a broad limitation here and making two classes of carriers in a way that they should not be carriers. We have a trucking industry today with about 20 million tons a year as against I think 120 for the railways, so that the trucking industry beyond any shadow of a doubt is a major vital factor in the transportation picture in Canada. If we are going to work towards a national transportation policy I think we should begin to give them the benefit of all these bills which come before us which you would expect to accord to one of the major transportation industries in Canada. Having said that, there is one difference between subsection (1) and subsection (2) of this proposed amendment. The minister, as I understand it, has said, "Well, the truckers while they cannot get at me at number one can get at me at number two". Under number one however, all that is necessary to do is to satisfy the minister that something should be investigated. Under subsection (2) the truckers would have to satisfy the Governor in Council that something was undesirable and I suggest there is a great deal of difference between those two terms and

because of that it puts the trucker at a comparative disadvantage. You can come to the minister and as he is a very reasonable man, as shown by the fact that he accepted a suggestion of mine regarding an amendment earlier today, you probably could convince him perhaps with comparative ease that something should be investigated. But here the trucker is not doing that. He has got to come and convince him that it is undesirable. That requires, in order to arrive at that point, a preliminary investigation, collection of his material and data which would be comparatively difficult for a trucking association to accumulate and all of that before they can appear before the minister and make the case that something is undesirable; and then they have got to convince the Governor in Council.

Mr. CARRICK: It does not say he has to consider it is undesirable. It says: "if he has reason to believe it may be undesirable", which is quite a different thing.

Mr. HAMILTON (*Notre-Dame-de-Grace*): It may be the way Mr. Carrick understands it.

Mr. CARRICK: There is a big difference.

Mr. HAMILTON (*Notre-Dame-de-Grace*): I am hanging my case on the one phrase "if he is satisfied in the public interest the complaint should be investigated."

Hon. Mr. MARLER: Mr. Hamilton, are you not leaving out a rather important preliminary because the complaint has to say that the agreed charge is unjustly discriminatory. That is the first thing that must be shown; or that it places the business of a shipper or a carrier at an unfair disadvantage. Those two statements have to be made first. Those two statements must be substantiated.

Mr. HAMILTON: I quite realize that. The point being, however, that both those things are in the power of the individual applicant to decide and to support very largely from his own experience and his own records. He can, knowing his own experience with this agreed charge, probably demonstrate that it is unjust and discriminatory and certainly he can show whether or not it places his business at an unfair disadvantage. Having done that which he can do within his own organization, I would think then he had maybe a prima facie case which has been referred to by the minister earlier to claim that there should be an investigation. That is why I feel that the trucker is justified and should be allowed to come in under subsection 1. If you throw him down under the other subsection, even if he has these two factors to which I have referred, it is still quite possible that there is nothing undesirable in the particular situation, and he has to go far beyond these two factors and make a case which is far broader and far more difficult for him to do as I said before because the facts are not there under his control or he is not able to obtain those facts. That would be the primary reason why I think Mr. Green's amendment is more than reasonable coupled with the fact that I think we must place the trucking industry today in a reasonable position where they have rights of appeal that are similar to other associations and other transportation industries in Canada.

Mr. CHAIRMAN: Mr. Langlois has submitted a new section 33 under clause 1 and to that Mr. Green moved a subamendment which inserts after the word "rail" on the fourth line of that proposed new section, the words "or association of motor vehicle transport operators." Then it carries on in (*b*) "any association tion or other body representative of the shippers of any locality may complain" and so forth.

Mr. HANSELL: May I ask for a recorded vote on this amendment.

The CHAIRMAN: All those in favour say aye and those opposed say nay.

(A recorded vote was taken)

The CHAIRMAN: I declare the sub-amendment lost.

Shall subsection (1) of the new section 33 carry?

Carried.

The CHAIRMAN: Shall subsection (2) carry?

Carried.

The CHAIRMAN: Shall subsection (3) carry?

Carried.

The CHAIRMAN: Shall subsection (4) carry?

Carried.

The CHAIRMAN: Shall subsection (5) carry?

Carried.

The CHAIRMAN: Shall clause 1 as amended carry?

Carried

The CHAIRMAN: Shall the title carry?

Carried.

The CHAIRMAN: Shall the bill as amended carry?

Carried.

The CHAIRMAN: Shall I report the bill as amended?

Carried.

Mr. McIVOR: Mr. Chairman, I would just like to express appreciation of the ability and splendid patience of the witnesses who appeared before the outstanding brains of Canada and dealt so well with the variety of questions addressed to them. I think they did a good job and I move a hearty vote of appreciation to them.

Mr. HANSELL: I was going to suggest that since there was some doubt previously that this matter would be brought before the committee I would like personally to express my thanks to the minister for his decision to bring it before the committee so that those witnesses would have the opportunity to present their case.